LOCAL COURT RULES

OF THE

UNITED STATES DISTRICT COURT

FOR THE

WESTERN DISTRICT OF TEXAS

Revised: December 1, 2002

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The Internal Operating Procedures correlate the Federal Rules of Civil Procedure and the applicable Local Rules with the internal operating procedures within the U. S. District Clerk's Office. These Internal Operating Procedures are available upon request at the U. S. District Clerk's Office and on our Internet Site <www.txwd.uscourts.gov.>

WESTERN DISTRICT OF TEXAS

The UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS is comprised of seven divisions.

(1) The **AUSTIN DIVISION** comprises the following counties: Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington and Williamson.

Court for the Austin Division shall be held at Austin. The addresses and telephone numbers for the U.S. District Clerk and residing U. S. District Judges at Austin are as follows:

U. S. District Clerk
U. S. Courthouse
200 West 8th Street
Austin, Texas 78701
(512) 916-5896

Hon. James R. Nowlin, Chief Judge
U. S. District Judge
200 West 8th Street
Austin, Texas 78701
(512) 916-5675

Hon. Sam Sparks
U. S. District Judge
200 West 8th Street
Austin, Texas 78701
(512) 916-5230

Hon. Harry Lee Hudspeth
Senior District Judge
903 San Jacinto Blvd., Suite 350
Austin, Texas 78701
(512) 916-5837

Hon. William Wayne Justice
Senior District Judge
903 San Jacinto Blvd., Suite 310
Austin, Texas 78701
(512) 916-5283

(2) The **DEL RIO DIVISION** comprises the following counties: Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde and Zavala.

Court for the Del Rio Division shall be held at Del Rio. The address and telephone number of the office of the U. S. District Clerk at Del Rio is:

U. S. District Clerk
U. S. Courthouse
111 East Broadway, Room L-100
Del Rio, Texas 78840
(830) 703-2054

Hon. Alia M. Ludlum
U. S. District Judge
111 East Broadway, Room A-202
Del Rio, Texas 78840
(830) 703-2038

(3) The **EL PASO DIVISION** comprises the following county: El Paso.

Court for the El Paso Division shall be held at El Paso. The addresses and telephone numbers for the U. S. District Clerk and residing U. S. District Judge at El Paso are as follows:

U. S. District Clerk
U. S. Courthouse
511 East San Antonio Street
Room 350
El Paso, Texas 79901
(915) 534-6725

Hon. David Briones
U. S. District Judge
U. S. Courthouse
511 East San Antonio Street
El Paso, Texas 79901
(915) 534-6744

Hon. Philip R. Martinez
U. S. District Judge
U. S. Courthouse
511 East San Antonio Street
El Paso, Texas 79901
(915) 534-6736

(4) The **PECOS DIVISION** comprises the following counties: Brewster, Culberson, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Ward and Winkler.

Court for the Pecos Division shall be held at Pecos. The address and telephone number of the office of the U. S. District Clerk at Pecos is:

U. S. District Clerk
U. S. Courthouse
410 South Cedar Street
Pecos, Texas 79772
(915) 445-4228

(5) The **SAN ANTONIO DIVISION** comprises the following counties: Atascosa, Bandera, Bexar, Comal, Dimmit, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real and Wilson.

Court for the San Antonio Division shall be held at San Antonio. The addresses and telephone numbers for the U. S. District Clerk and residing U. S. District Judges at San Antonio are as follows:

U. S. District Clerk
John H. Wood, Jr.
U. S. Courthouse
Hemisfair Plaza
655 E. Durango Blvd.
San Antonio, Texas 78206
(210) 472-6550

Hon. Edward C. Prado
U. S. District Judge
John H. Wood, Jr.
U. S. Courthouse
655 E. Durango Blvd.
San Antonio, Texas 78206
(210) 472-4060

Hon. Fred Biery
U. S. District Judge
John H. Wood, Jr.
U. S. Courthouse
655 E. Durango Blvd.
San Antonio, Texas 78206
(210) 472-6505

Hon. Orlando L. Garcia
U. S. District Judge
John H. Wood, Jr.
U. S. Courthouse
655 E. Durango Blvd.
San Antonio, Texas 78206
(210) 472-6565

(6) The **WACO DIVISION** comprises the following counties: Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson and Somervell.

Court for the Waco Division shall be held at Waco. The addresses and telephone number for the U. S. District Clerk and residing U. S. District Judge at Waco are as follows:

U. S. District Clerk
U.S. Courthouse
800 Franklin
Waco, Texas 76701
(254) 750-1501

Hon. Walter S. Smith, Jr.
U. S. District Judge
P.O. Box 1908
Waco, Texas 76703
(254) 750-1519

(7) The **MIDLAND/ODESSA DIVISION** comprises the following counties: Andrews, Crane, Ector, Martin, Midland and Upton.

Court for the Midland/Odessa Division shall be held at Midland. Court may be held, in the discretion of the Court, in Odessa, when courtroom facilities are made available at no expense to the government. The addresses and telephone numbers for the U. S. District Clerk and residing U. S. District Judge at Midland are as follows:

U. S. District Clerk
U.S. Courthouse
200 E. Wall, Room 107
Midland, Texas 79701
(915) 686-4001

Hon. W. Royal Furgeson, Jr.
U. S. District Judge
U. S. Courthouse
200 E. Wall, Room 301
Midland, Texas 79701
(915) 686-4040

SECTION I - CIVIL RULES

RULE CV-1. SCOPE OF RULES

(a) The rules of procedure in any proceeding in this Court shall be prescribed by the laws of the United States, the rules of the Supreme Court of the United States, any applicable rules of the United States Court of Appeals for the Fifth Circuit, and these rules.

(b) Where in any proceeding or in any instance there is no applicable rule of procedure, a judge may prescribe same.

(c) These rules may be cited as Local Court Rules.

(d) These revised rules are effective as of December 1, 2000, and shall govern all proceedings brought in this Court after said date as well as all proceedings pending at the time they take effect, except for the following:

(1) All pending cases with scheduling orders in place on December 1, 2000, will continue under those scheduling orders.

(2) In any proceedings pending on December 1, 2000, where in the opinion of the Court the application of these rules would not be feasible or would work an injustice in which event the Court shall enter specific orders regarding that specific case.

(e) Any judge of this Court may waive any requirement of these rules regarding the administration of that judge's specific docket.

RULE CV-3. COMMENCEMENT OF ACTION

(a) Civil Cover Sheet. The clerk is authorized and instructed to require a complete and executed AO Form JS 44, Civil Cover Sheet, which shall accompany each civil case to be filed. The clerk is instructed to accept for filing any civil case which is not accompanied by a complete and executed Civil Cover Sheet and thereafter advise the court of the violation of the rule and seek order of court. Persons filing civil cases, who are at the time of such filing in the custody of Civil, State or Federal institutions, and persons filing civil cases pro se, are exempted from the foregoing requirement.

(b) Habeas Corpus and Motions Pursuant to 28 USC § 2255. Petitions for writ of habeas corpus and motions filed pursuant to 28 U.S.C. § 2255 by persons in custody shall be in writing, signed and verified. Such petitions and motions shall be on forms supplied by the Court and an original and two copies must be filed with the Clerk of the District Court for the Western District of Texas in the proper division.

(c) Petitions to Stay Execution of State Court Judgments.

(1) A plaintiff who seeks a stay of enforcement of a state court judgment or order shall attach to the petition a copy of each state court opinion and judgment involving the matter to be presented. The petition shall also state whether or not the same plaintiff has previously sought relief arising out of the same matter from this court or from any other federal court. The reasons for denying relief given by any court that has considered the matter shall also be attached. If reasons for the ruling were not given in a written opinion, a copy of the relevant portions of the transcripts shall be supplied. If the stay involves a death penalty, the petition shall be filed at least five (5) days before the execution date or the petitioner must establish good cause for any late filing.

(2) If any issue is raised that was not raised, or has not been fully exhausted, in state court, the petition shall state the reasons why such action has not been taken.

(3) This court's opinion in any such action shall separately state each issue raised by the petition and rule expressly on each issue stating the reasons for each ruling made.

(4) If a certificate of probable cause is issued in any such case, the court will also grant a stay of execution to continue until such time as the Court of Appeals expressly acts with reference to it.

(5) If the same petitioner has previously filed in this court an application to stay enforcement of a state court judgment or for habeas corpus relief, the case shall be assigned to the judge who considered the prior matter.

(6) A second or successive petition for habeas corpus may be dismissed if the court finds that it fails to allege new or different grounds for relief, if the failure of the petitioner to assert those grounds in a prior petition constitutes an abuse of the writ, or if the petition is frivolous and entirely without merit. Even if it cannot be concluded that a petition should be dismissed on these grounds, the court will expedite consideration of any second or successive petition.

RULE CV-5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) All pleadings shall be furnished to the Clerk in duplicate, the "original" of which shall be marked and filed, and the remaining copy shall be sent to the judge on whose docket the case is placed.

(b) Papers presented for filing shall contain an acknowledgment of service by the person served, or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

(c) All orders and decrees submitted for settlement or signature must be presented to the clerk's office, and not sent directly to the judge. In case of contest as to form or substance, the clerk will give such notice of hearing thereon as may be required by the judge.

(d) If documents not conforming to this rule are offered, the Clerk shall file the document and thereafter advise the Court of the violation of the rule and seek order of Court.

RULE CV-7. PLEADINGS ALLOWED; FORM OF MOTIONS

(a) Generally. All motions, unless made during a hearing or trial, shall be in writing. Every motion shall be signed by at least one attorney of record, listing the attorney's mailing address, state bar card number and telephone number (including area code). The signature of an attorney constitutes a certificate of compliance under Rule 11, Federal Rules of Civil Procedure.

Any "pro se" party pleading must bear the "pro se" party's signature and shall specify the "pro se" party's mailing address and telephone number (including area code). The signature of a party "pro se" constitutes a certificate that he or she has read the pleading, that there is a bona fide basis to support the pleading, and the pleading is not made for the purpose of delay.

(b) Documents Supporting Motions. When allegations of fact not appearing in the record are relied upon in support of a motion, a summary of the facts relied upon with supporting affidavits and other pertinent documents then available shall be filed in an appendix, served and filed with the motion.

(c) Legal Authorities Supporting Motions. The specific legal authorities supporting any motion shall be cited in the motion and the motion shall be limited to ten (10) pages in length, unless otherwise authorized by the Court. An appendix may be filed with the motion specifying any factual basis relied upon and shall include all affidavits, deposition transcripts or other documents supporting the relied upon facts. No legal authorities are required to be cited in any of the following motions: (1) for extension of time for the performance of an act required or allowed to be done, provided request therefor is made before the expiration of the period originally prescribed, or as extended by previous orders; (2) to continue a pretrial conference hearing or motion, or the trial of an action; (3) for a more definite statement; (4) to join additional parties; (5) to amend pleadings; (6) to file supplemental pleadings; (7) to appoint next friend or guardian ad litem; (8) to intervene; (9) for substitution of parties; (10) relating to discovery, including, but not limited to motions for the production and inspection of documents, specific objections to interrogatories, motions to compel answers or further answers to interrogatories, and motions for physical or mental examination; (11) to stay proceedings to enforce judgment; (12) joint motions to dismiss; (13) to withdraw as counsel; (14) for mediation or other form of alternative dispute resolution; and (15) for approval of an agreed protective order. All the motions herein referred to, while not required to be accompanied by legal authorities, must state the grounds therefore and cite any applicable rule, statute, or other authority, if any, justifying the relief sought.

(d) Responses. If any party opposes a motion, the respondent shall file a response and supporting documents as are then available within eleven (11) days of service of the motion. The response shall contain a concise statement of the reasons and opposition to the motion and citations of the specific legal authorities upon which the party relies. The response is limited to ten (10) pages unless otherwise authorized by the Court. If there is no response filed within the time period prescribed by this rule, the Court may grant the motion as unopposed.

(e) Replies. A party may file a reply in support of a motion. Any reply shall be filed within eleven (11) days of service of the response, but the court need not wait for the reply before ruling on the motion. A reply shall be limited to five (5) pages, unless otherwise authorized by the Court. Absent leave of Court, no further submissions on the motion are allowed.

(f) Proposed Orders. A proposed order shall be filed with all motions specifically referenced in Local Rule CV-7(c). When a motion is one that requires a proposed order, any response to that motion shall also be accompanied by a proposed order.

(g) Oral Hearings. A movant or respondent may specifically request an oral hearing, but the allowance of an oral hearing shall be within the sole discretion of the judge to whom the motion is assigned.

(h) Conference Required. The Court may refuse to hear or may deny a nondispositive motion unless the movant advises the Court within the body of the motion that counsel for the parties have first conferred in a good-faith attempt to resolve the matter by agreement and, further, certifies the specific reason(s) that no agreement could be made. A dispositive motion within the meaning of this rule is a motion to dismiss, a motion for judgment on the pleadings, a motion for summary judgment or partial summary judgment, a motion for new trial, and a motion for judgment as a matter of law. Movants are encouraged to indicate in the title of the motion whether the motion is opposed. A motion is unopposed only if there has been an actual conference with opposing counsel and there is no opposition to any of the relief requested in the motion.

(i) Claims for Attorney's Fees.

(1) All motions for an award of attorney's fees shall be filed and served no later than fourteen (14) days after entry of judgment pursuant to Rule 54 of the Federal Rules of Civil Procedure. Counsel for the parties shall meet and confer for the purpose of resolving all disputed issues relating to attorney's fees prior to making application. The application shall certify that such a conference has occurred. If no agreement is reached, the applicant shall certify the specific reason(s) why the matter could not be resolved by agreement. The motion shall include a supporting document organized chronologically by activity or project, listing attorney name, date, and hours expended on the particular activity or project, as well as an affidavit certifying (1) that the hours expended were actually expended on the topics stated, and (2) that the hours expended and rate claimed were reasonable. Such application shall also be accompanied by a brief memo setting forth the method by which the amount of fees was computed, with sufficient citation of authority to permit the reviewing court the opportunity to determine whether such computation is correct. The request shall include reference to the statutory authorization or other authority for the request. Detailed time sheets for each attorney for whom fees are claimed may be required to be submitted upon further order of the Court.

(2) Objections to any motion for attorney's fees shall be filed on or before eleven (11) days after the date of filing. If there is no timely objection, the Court may grant the motion as unopposed.

(3) The motion shall be resolved without further hearing, unless an evidentiary hearing is requested, reasons therefor presented, and good cause shown, whereupon hearing on the motion may be granted.

(4) Motions for award of attorney's fees filed beyond the fourteen (14) day period may be deemed untimely and a waiver of entitlement to fees.

RULE CV-10. FORM OF PLEADINGS

All pleadings, motions, orders and papers presented to the Clerk for filing shall, when offered for filing, be typed or printed, double-spaced, on paper sized 8½" X 11" without erasures or interlineation materially defacing them and shall be endorsed with the style of the case and the descriptive name of the pleading or document. Every pleading, motion or other document filed by a party shall contain the attorney's mailing address, signature, state bar card number, and telephone and fax numbers (including area code) of the attorney filing the pleading, motion or other paper. Any pleading filed by a "pro se" party shall contain the party's mailing address, signature, and telephone number (including area code).

RULE CV-12. DEFENSES OF QUALIFIED OR ELEVENTH AMENDMENT IMMUNITY

In any case filed pursuant to 42 U.S.C. § 1983, or involving causes of action in which the defense of qualified or Eleventh Amendment immunity may be asserted, the party or parties asserting the defense shall file a motion to dismiss or for summary judgment in their initial pleading or within thirty calendar days of their initial pleading, or, if asserted in response to allegations made by amended complaint, within twenty days of the date the amended complaint was filed. When a party files a motion to dismiss or for summary judgment based on qualified or Eleventh amendment immunity, the opposing party shall have eleven days from the date the motion is served on the opposing party to file a response and to specify what, if any, discovery is necessary to determine the issue(s) of qualified or Eleventh amendment immunity and the time period necessary for the specific discovery.

RULE CV-16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

(a) A uniform form of scheduling order will be entered in every case except those exempted in Section (b) of this rule and those in which exceptional circumstances require entry of a different form of order. The form of the scheduling order is set out in **Appendix "B"** of these rules. The scheduling order will, after filing, control the course of the case and may not be amended without leave of Court.

(b) The same types of cases that are exempt from mandatory disclosure requirements under Federal Rule of Civil Procedure 26(a)(1)(E) will be exempt from the scheduling order requirement of Rule 16. In addition, the following categories of cases shall also be exempt from the scheduling order requirement: (1) bankruptcy appeals; (2) civil forfeiture cases; (3) land condemnation cases; (4) naturalization proceedings filed as civil cases; (5) interpleader cases; and (6) any other case where the judge finds that the ends of justice would not be served by using the scheduling order procedure of Rule 16.

(c) Within sixty (60) days after any appearance of any defendant, the parties shall submit a proposed scheduling order to the Court in the form as indicated in **Appendix "B"**. The parties first shall confer as required by Rule 26(f). The content of the proposed scheduling order shall include proposals for all deadlines set out in the form for scheduling order contained in **Appendix "B"** to these rules. The parties shall endeavor to agree concerning the contents of the proposed order, but in the event they are unable to do so, each party's position and the reasons for the disagreement shall be included in the proposed schedule submitted to the Court. In the event the plaintiff has not yet obtained service on all defendants, the plaintiff shall include an explanation of why all parties have not been served. The scheduling proposals of the parties shall be considered by the trial court, but the setting of all dates is within the discretion of the Court.

(d) Unopposed discovery may continue after the deadline for discovery contained in the scheduling order, provided that discovery does not delay other pretrial preparations or the trial setting. Absent exceptional circumstances, no motions relating to discovery, including motions under Rules 26(c), 29, and 37, shall be filed after the expiration of the discovery deadline, unless they are filed within five (5) business days after the discovery deadline and pertain to conduct occurring during the final seven (7) calendar days of discovery. Written discovery is not timely unless the response to that discovery would be due before the discovery deadline. The responding party has no obligation to respond and object to written discovery if the response and objection would not be due until after the discovery deadline. Depositions must be completed before the discovery deadline. Notices served before the discovery deadline which purport to schedule depositions after the discovery deadline will not be enforced.

(e) Unless otherwise ordered by the Court, each party must serve and file the following information at least ten (10) calendar days before the scheduled date for trial, the date of jury selection, docket call, or the final pretrial conference, whichever is first.

(1) A list of questions the party desires the Court to ask prospective jurors.

(2) In cases to be tried to a jury, a statement of the party's claims or defenses to be used by the Court in conducting voir dire. The statement shall be no longer than ½ page with type double-spaced.

(3) A list of proposed stipulated facts.

(4) An appropriate identification of each exhibit as specified in this rule (except those to be used for impeachment only), separately identifying those which the party expects to offer and those which the party may offer if the need arises.

(5) The name and, if not previously provided, the address and telephone number of each witness (except those to be used for impeachment only), separately identifying those whom the party expects to present and those whom the party may call if the need arises.

(6) The name of those witnesses whose testimony is expected to be presented by means of a deposition (except those to be used for impeachment only) and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony.

(7) Proposed jury instructions and verdict forms.

(8) In non-jury trials, Proposed Findings of Fact and Conclusions of Law.

(9) Any motions in limine.

(10) An estimate of the probable length of trial.

At least three (3) calendar days prior to the scheduled date for trial, the date of jury selection, docket call, or the final pretrial conference, whichever is first, each party must serve and file the following:

(i) A list disclosing any objections to the use under Rule 32(a) of a deposition designated by the other party.

(ii) A list disclosing any objection, together with the grounds therefore, that may be made to the admissibility of any exhibits. Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the Court for good cause shown.

(f) All trial exhibits shall be marked with an identifying sequence, followed by a dash, followed by a number; for example, Exhibit P1 and Exhibit D1. The identifying sequence (e.g., "P" and "D") will identify the party who will offer the exhibit. Parties will assign numbers to their exhibits consecutively, beginning with the number 1. The letter "G" will be assigned to the government for identification purposes. In cases involving more complex pleading relationships (e.g., consolidated cases, intervenors, and third party actions), it will be the responsibility of counsel for the plaintiff(s), in consultation with the judge's courtroom deputy clerk, to coordinate the assignment of the unique identification sequences.

RULE CV-23. CLASS ACTIONS

When a class action allegation is made in any pleading, the movant shall file, within thirty (30) days after any defendant's first pleading, a motion for class certification. The motion shall include, but is not limited to, the information set forth in **Appendix "A"**. Failure to timely file a motion for class certification shall constitute a waiver of the request for any class action.

RULE CV-26. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) If relief is sought under Rule 26(c), FED. R. CIV. P., concerning any interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories or responses to requests for admissions, copies of the portions of the interrogatories, requests, answers or responses in dispute shall be attached to the motion.

(b) The full text of the definitions and rules of construction set forth in this paragraph is deemed incorporated by reference into all discovery requests, but shall not preclude (i) the definition of other terms specific to the particular litigation, (ii) the use of abbreviations or (iii) a more narrow definition of a term defined in this paragraph. This rule is not intended to broaden or narrow the scope of discovery permitted by the Federal Rules of Civil Procedure. The following definitions apply to all discovery requests:

(1) Communication. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

(2) Document. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). A draft of a nonidentical copy is a separate document within the meaning of this term.

(3) Identify (With Respect to Persons). When referring to a person, to "identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(4) Identify (With Respect to Documents). When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

(5) Parties. The terms "plaintiff" and "defendant" as well as a party's full or abbreviated name or pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

(6) Person. The term "person" is defined as any natural person or business, legal or governmental entity or association.

(7) Concerning. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

(c) Upon motion by any party, the Court shall enter a protective order in the form set out in **Appendix "H"**, absent a showing of good cause by any party opposing entry of the order. In cases where the parties agree to a protective order, the form set out in **Appendix "H"** is approved.

(d) A party's production of a document in response to written discovery authenticates the document for use against that party in any pretrial proceeding or at trial unless – within ten (10) days or a longer or shorter period ordered by the court or specified by Local Rule CV-16(e), after the producing party has actual notice that the document will be used – the party objects to the authenticity of the document, or any part of it, stating the specific basis for objection. An objection must be either on the record or in writing and must have a good faith factual and legal basis. An objection made to the authenticity of only part of a document does not affect the authenticity of the remainder. If objection is made, the party attempting to use the document should be given a reasonable opportunity to establish its authenticity.

RULE CV-30. DEPOSITIONS UPON ORAL EXAMINATION

(a) Notice. The notice for a deposition shall be in the form prescribed in Rule 30, FED. R. CIV. P., and in addition shall state the identity of persons who will attend other than the witness, parties, spouses of parties, counsel, employees of counsel, and the officer taking the deposition. If any party intends to have any other persons attend, that party must give reasonable notice to all parties of the identity of such other persons.

(b) Procedures, Examinations and Objections. The parties are permitted to stipulate on the record of the deposition any agreement regarding the rules for the deposition. Objections during depositions shall be stated concisely and in a non-argumentative and non-suggestive manner. An attorney shall not, in the presence of the deponent, make objections or statements which might suggest an answer to the deponent. An attorney for a deponent shall not initiate a private conference with the deponent regarding a pending question, except for the purpose of determining whether a claim of privilege should be asserted. An attorney who instructs a deponent not to answer a question shall state, on the record, the legal basis for the instruction consistent with Federal Rule of Civil Procedure 30(d)(1). If a claim of privilege has been asserted as a basis for an instruction not to answer, the attorney seeking discovery shall have reasonable latitude during the deposition to question the deponent and establish relevant information concerning the appropriateness of the assertion of the privilege, including (i) the applicability of the privilege being asserted, (ii) the circumstances that may result in the privilege having been waived, and (iii) circumstances that may overcome a claim of qualified privilege. A violation of the provisions of this local rule may be deemed to be a violation of a court order and may subject the violator to sanctions under Federal Rule of Civil Procedure 37(b)(2).

(c) Videotaped and Audiotaped Depositions. If the deposition is to be recorded by videotape or audiotape, the party noticing the deposition or subpoenaing the witness shall be responsible for ensuring that the equipment used is adequate to produce a clear record. If the deposition is to be recorded by videotape, the procedures set out in **Appendix "I"** shall govern the deposition proceedings, except upon stipulation of the parties or order of the Court upon motion and showing of good cause.

RULE CV-33. INTERROGATORIES TO PARTIES

(a) All answers to interrogatories must be signed by the party except that, if circumstances prevent a party from signing responses to interrogatories, the attorney may serve the responses without the party's signature if an affidavit is served simultaneously stating that properly executed responses to interrogatories will be filed within twenty (20) days. Such time may be extended by order of the Court.

(b) Each party that chooses to submit written interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure may use the following questions. The Court will not entertain any objection to these approved interrogatories, except upon a showing of exceptional circumstances. Each of the following interrogatories counts as one question; as to all interrogatories other than those approved in this rule, subparts count as separate questions.

(1) Identify all persons who you believe have knowledge of relevant facts and identify the issues upon which you believe they have knowledge.

(2) Identify all persons or legal entities who have a subrogation interest in the cause of action set forth in your complaint [or counterclaim], and state the basis and extent of said interest.

(3) If [name of party to whom the interrogatory is directed] is a partner, a partnership, or a subsidiary or affiliate of a publicly owned corporation that has a financial interest in the outcome of this lawsuit, list the identity of the parent corporation, affiliate, partner, or partnership and the relationship between it and [the named party]. If there is a publicly owned corporation or a holding company not a party to the case that has a financial interest in the outcome, list the identity of such corporation and the nature of the financial interest.

(4) If the defendant is improperly identified, give its proper identification and state whether you will accept service of an amended summons and complaint reflecting the information furnished by you in answer hereto.

(5) If you contend that some other person or legal entity is, in whole or in part, liable to [the plaintiff or defendant] in this matter, identify that person or legal entity and describe in detail the basis of said liability.

RULE CV-36. REQUESTS FOR ADMISSION

Requests for admission made pursuant to Rule 36, FED. R. CIV. P, will be limited to thirty (30) requests, which shall in like manner include all separate paragraphs and sub-parts contained within a number request. The Court may permit further requests upon a showing of good cause.

RULE CV-47. JURORS

(a) The selection, qualification, summoning, exemption or excuse from service of petit jurors shall be governed by the Plan of Implementation adopted by the Court pursuant to The Jury Selection and Service Act of l968, 28 United States Code § 1861, et seq, **(Appendix "D"**). Additionally, to assist the court in selecting a jury, prospective jurors will be required to complete the Juror Qualification Questionnaire form set out in **Appendix "D-1".**

(b) In all civil jury cases, except as may be otherwise expressly required by law or controlling rule or by stipulation of the parties approved by the Court, the jury shall consist of at least six members.

(c) The clerk shall administer to the bailiff, or other special officer appointed to attend upon juries in all cases, an oath in the following form:

> "You solemnly swear that you will keep this jury during their retirement, in some convenient place removed from the presence of other persons; that you will not, without leave of the Court, suffer any person to speak to them; that you will not without such leave, hold or have any communication with them yourself, except to ascertain whether they have agreed upon their verdict and to attend to their desires for food and other necessaries; and that you will well and faithfully discharge your duties as bailiff. So help you God."

RULE CV-65. INJUNCTIONS

An application for a temporary restraining order or for a preliminary injunction shall be made in an instrument separate from the complaint.

RULE CV-65.1. SECURITY: PROCEEDINGS AGAINST SURETIES

(a) No clerk, marshal, attorney, or officer of this Court will be accepted as surety, either directly or indirectly, on any bond or undertaking in any action or proceeding in this Court, nor shall any such person advance or provide money or other thing of value for any cost, bail, attachment or replevy bond taken in this Court.

(b) Unless the Court otherwise directs, every bond furnished in connection with any matter must be done in one of the following manners:

(1) Cash or United States Government Bonds deposited in the registry of the Court in lieu of sureties.

(2) Surety bonds which have:

a. A corporation authorized by the Secretary of Treasury of the United States to act as surety on official bonds;

b. An individual resident of the Western District of Texas who satisfies the Court that he owns real or personal property not exempt by law within the district sufficient to justify the full amount of the suretyship.

RULE CV-67. DEPOSIT IN COURT

In addition to complying with Rule 67, Federal Rules of Civil Procedure and Bankruptcy Rule 7067, the following procedures will govern deposits into the Court Registry Funds.

(a) All funds tendered for deposit into the registry funds of this court shall be placed in some form of interest bearing account.

(b) An original and one copy of a motion requesting leave of court to deposit funds into the registry must be filed. The motion must be served on all interested parties to the proceeding. The motion and proposed order shall set out with particularity the following information:

(1) The form of deposit.

(2) The name and address of the private institution where the deposit is to be made.

(3) The form of additional collateral to be posted by the private institution in the event the standard FDIC coverage is insufficient to insure the total amount of deposit.

(4) Provide for the payment of the registry fee assessment to the Clerk of Court under the provisions published in the Federal Register. The registry fee is a variable rate depending on (1) the size of the deposit and (2) the length of time held in the court's registry. Contact the Financial Deputy in the division where the deposit will be made to determine the applicable rate of the registry fee assessment for a particular case.

(5) Such other information that may be deemed appropriate under the facts and circumstances of the particular case.

(c) The clerk of the court will be the designated beneficiary and the custodian of the invested accounts.

(d) After the order is entered permitting deposit and investment or reinvestment of funds, the party presenting the order shall deliver a copy of said order on the clerk of court, either personally or by certified mail or in his absence, the divisional office manager. It shall also be incumbent on the presenting party to confirm that the appropriate action has been accomplished by the clerk in accordance with the provisions of the order.

(e) Upon entry of an order directing the clerk to disburse funds on deposit in the registry of the court, it will be the responsibility of the movant to serve a copy of said order on the clerk as set forth in subparagraph (d) above.

(f) All accounts established at private financial institutions shall be established in the name of the United States District Court for the Western District of Texas, Clerk of Court Trustee for: Case Number:_____ .

(g) All disbursement orders presented to the court will include the name, address and Social Security or Tax I.D. Number of the payee(s) entitled to the principal and accumulated interest. The payer bank will file information returns (1099s) for interest earned pursuant to Revenue Ruling 76-50.

RULE CV-72. MAGISTRATE JUDGES, PRETRIAL MATTERS

The magistrate judges of this Court are authorized to perform all the duties allowed to magistrate judges under the Federal Magistrates Act as amended in 28 United States Code § 636. The magistrate judges of this court are designated to exercise civil jurisdiction under section 636(c)(1) upon consent of the parties. Whenever applicable, the "Local Rules of the Assignment of Duties to United States Magistrate Judges" found at **Appendix "C"** herein, shall apply to proceedings before the magistrate judges.

RULE CV-77. DISTRICT COURTS AND CLERKS

(a) The clerk shall not be required to file or docket any cause or to issue any process, nor the marshal to serve or execute the same, until an amount provided by law or fixed by the marshal, as the case may be, is deposited by the plaintiff or appellant with the clerk or marshal to cover the immediate costs to accrue therein.

(b) The rule shall not apply to proceedings in forma pauperis.

RULE CV-79. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

No record, paper or deposition in the files of the Court shall be taken from the office or custody of the clerk, except upon written consent of the Court. The party offering any exhibit or deposition shall be responsible for its removal from the clerk's office within sixty days after the final disposition of the case, including appeal thereof. A detailed receipt shall be given by the party to the clerk. Any exhibit or deposition remaining more than sixty (60) days after final disposition of the case, including appeal, may be destroyed or otherwise disposed of by the clerk.

RULE CV-88. ALTERNATIVE DISPUTE RESOLUTION

(a) ADR Methods Available. The Court recognizes these ADR methods: early neutral evaluation, mediation, minitrial, moderated settlement conference, summary jury trial, and arbitration. The Court may approve any other ADR method the parties suggest or the Court believes is suited to the litigation.

(b) ADR Report. Upon order of the Court entered early in the case, the parties shall submit a report addressing the status of settlement negotiations, disclosing the identity of the person responsible for settlement negotiations for each party, and evaluating whether alternative dispute resolution is appropriate in the case. Counsel shall certify in the report that their clients have been informed of the ADR procedures available in this district. In the event the parties conclude that ADR is appropriate and agree upon a method of ADR and an ADR provider, they should identify both the method of ADR and the provider they have selected, the method by which the provider was selected, and how the provider will be compensated.

(c) Referral to ADR. The Court may refer a case to ADR on the motion of a party, on the agreement of the parties, or on its own motion; however, the Court may refer a case to arbitration only with the consent of the parties (including but not limited to their consent by contract to arbitration). If the parties agree upon an ADR method or provider, the Court will respect the parties' agreement unless the Court determines that another ADR method or provider is better suited to the case and parties. If the parties are unable to agree on an ADR provider, the Court will select a provider.

(d) Attendance; Authority to Settle. In addition to counsel, party representatives with authority to negotiate a settlement, and all other persons necessary to negotiate a settlement, including insurance carriers, must attend the ADR session.

(e) Fees. The provider and the litigants will determine the fees for the ADR. The Court reserves the right to review the reasonableness of the fees. If the provider and litigants are unable to agree, the Court will determine an appropriate fee.

(f) Certification and List of Providers.

(1) The Court will appoint three members in each division to a standing panel on ADR providers and designate one member as chairperson. The panel will review applications from providers and annually prepare a roster of those qualified under the criteria contained in this rule.

(2) To be eligible for listing, providers must meet the following minimum qualifications:

a. the person must be a member of the bar of the United States District Court for the Western District of Texas; and

b. the person must have been a member of the bar of the highest court of any state or the District of Columbia for at least five years; and

c. the person must have completed at least forty hours training in dispute resolution techniques in an alternative dispute resolution course approved by the State Bar of Texas Minimum Continuing Legal Education Department or the federal courts, or have been a judge of a court of record in the State of Texas.

(3) A provider denied listing may request a review of that decision.

(4) The Court may appoint and parties may select by agreement a provider who is not on the list.

(g) Disqualification. No person shall serve as a provider if any of the circumstances specified in 28 U.S.C. § 455 of the Judicial Code of Conduct exist, or if the provider believes in good faith that such circumstances exist.

(h) Relief from Referral. A party opposing either the ADR referral or the appointed provider must file written objections with the Court within ten (10) days of receiving notice of the referral or provider. Any party may obtain relief from an order upon a showing of good cause. Good cause may include a showing that the expenses relating to alternative dispute resolution would cause undue hardship to the party seeking relief from the order. In that event, the Court may in its discretion appoint a provider from the list of providers to serve at a reduced fee, or without fee, and at no cost to the party or parties.

(i) Confidentiality. Except as otherwise provided herein, or as agreed by the participants, a communication relating to the subject matter of any civil or criminal dispute made by any participant during an alternative dispute resolution procedure, whether before or after the institution of formal judicial proceedings, is confidential, may not be disclosed, may not be used as evidence against the participant in any judicial or administrative proceeding, and does not constitute a waiver of any existing privileges or immunities.

(1) Any record made at an alternative dispute resolution procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring the disclosure of confidential information or data relating to or arising out of the matter in dispute.

(2) An oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable if it is admissible or discoverable independent of the procedure.

(3) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the Court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the Court or whether the communications or materials are subject to disclosure.

(j) Summary Jury Trial. In cases where alternative dispute resolution procedures have proved unsuccessful and a complex and lengthy trial is anticipated, the Court may conduct a summary jury trial provided that the Court finds that a summary jury trial may produce settlement of all or a significant part of the issues and thereby effect a saving in time, effort and expense for all concerned and provided the parties consent to the procedure. The Court should develop procedures for such summary jury trial with the advice of counsel.

(k) Final ADR Report. At the conclusion of each ADR proceeding, the provider shall submit to the Court a notice of outcome, including the style and number of the case, the type of case, the method of ADR, whether the case has settled, and the provider's fees.

(l) Sanctions. The sanctions available under Federal Rule of Civil Procedure 16(f) shall apply to any violation of this rule.

SECTION II - CRIMINAL RULES

RULE CR-1. SCOPE AND APPLICABILITY OF RULES

(a) Scope. These rules apply in all criminal proceedings before the district and magistrate judges of the Western District of Texas.

(b) Applicability.

(1) ***Conflicts with Other Laws or Rules.*** To the extent any of these rules conflict with a law of the United States, or an applicable rule of the Supreme Court of the United States or the United States Court of Appeals for the Fifth Circuit, the rule must not apply.

(2) ***Waiver of Rules.*** Any judge of this court may waive a requirement of any of these rules when it is in the interest of justice.

(3) ***Absence of Rule.*** When no specific rule governs a procedural matter, the judge may prescribe the procedure for that case.

(c) Citation. These rules may be cited as the Western District of Texas Rules.

Committee Notes

1. The language of Rule CR-1 has been amended as part of the general restyling of the local criminal rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

2. The rules apply to cases then pending, unless applying a rule is not in the interest of justice.

3. Subsection (f) of the former rule, setting forth authority of magistrate judges is omitted from the proposed revision. The delegation of magistrate authority is not related to the general scope and applicability of the local rules and logically should be placed in its own rule. The style of subsection (f) has been revised as proposed Rule CR-58, consistent with proposed revisions to the Fed. R. Crim. P., which place matters pertaining to proceedings before a magistrate judge in Fed. R. Crim. P. 58.

CR-5A. PRETRIAL SERVICES INTERVIEW, REPORT AND SUPERVISION OF CONFIDENTIAL INFORMANTS.

(a) Interview.

(1) ***Notice to Defendant.*** Before conducting a pretrial services interview, the pretrial services officer must notify the defendant of:

(A) the circumstances under which the information the defendant provides must be disclosed; and

(B) the defendant's rights during the interview, including:

(i) the defendant's right not to be questioned regarding the charges in the case;

(ii) the defendant's right to decline to speak or provide any information to the officer; and

(iii) the defendant's right to counsel during the interview.

(2) ***Notification Form.*** A form notifying the defendant of the rights set out in subsection (a)(1) is appended to this rule.

(3) ***Presence of Counsel.*** If the defendant wishes to have the assistance of counsel during the interview, the pretrial services officer must afford a reasonable opportunity for counsel to be present.

(b) Use and Disclosure of Pretrial Service Report and Related Information.

(1) ***In General.*** The use and disclosure of the pretrial services report, and any information obtained by the pretrial services officer in the course of performing the pretrial services function, are governed by 18 U.S.C. § 3153(c). The pretrial services officer must limit disclosure to the minimum information and the minimum number of persons necessary to carry out the purpose of the disclosure.

(2) ***Disclosure of the Pretrial Services Report.*** The pretrial services report must be disclosed to the attorney for the defendant and the attorney for the government. The report should not be redisclosed to other persons by the attorney for the defendant or the attorney for the government.

(3) ***Disclosure of the Pretrial Services Recommendation***. Unless otherwise ordered by the court, the pretrial services officer's recommendation as to the propriety and conditions of release will be disclosed to the parties with the pretrial services report.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

NOTICE TO DEFENDANTS

I, _____, am being asked questions about myself by a Pretrial Services Officer. I will not be questioned about the charges and I should avoid talking about them at this time. I understand I am under no obligation to give any information and I may decline to answer any particular question or all questions. However, I also understand the Pretrial Services Officer is required to provide a report to the court on my general background whether or not I choose to provide information at this time and that the absence of background information for consideration by the court could affect my chances for pretrial release. I further understand the report provided to the court will be made available to my attorney and the attorney for the government.

Any answers to these questions will be used by the court to decide whether I will be released or kept in jail pending my trial and whether I will have to take part in treatment programs such as for drug or alcohol abuse.

Statements I make to the Pretrial Services Officer in the course of the pretrial services function cannot be used against me on the issue of guilt in a criminal judicial proceeding. Any information could affect the decision regarding suitability for pretrial release.

If I am found guilty, either after trial or after pleading guilty, the information I provide to the Pretrial Services Officer will be made available to a U.S. Probation Officer for the purpose of investigating my background and preparing a presentence report and that information may affect my sentence.

I know I have the right to speak with a lawyer before answering any questions. If I cannot afford a lawyer, one will be appointed to represent me during questioning.

I have read this form, or had it read to me, and I understand my rights.

Date: _____ _____
Defendant's Signature

Time: _____ a.m. _____
p.m. Pretrial Services Officer

TXW/11/95

TRIBUNAL DE JUSTICIA DE LOS ESTADOS UNIDOS
DISTRITO OESTE DE TEXAS

AVISO A LOS ACUSADOS

Yo, _____, se que me están haciendo preguntas sobre mi persona por medio de un Oficial de la Agencia se Servicios de Pre-Procesamiento. No se me harán preguntas sobre los cargos en mi contra y deberé evitar hablar sobre ello por el momento. Tengo entendido que no tengo obligación de dar ninguna información y puedo reusar a contestar cualquier pregunta en particular o a todas las preguntas que se me hagan. Sinembargo, también comprendo que el Oficial de Servicios de Pre-Procesamiento es requerido rendir un informe a la Corte sobre mis antecedentes personales, decida yo dar o no dar esta información a este tiempo y que por falta de esta información para la consideración de la Corte, pudiera afectar mi libertad de pre-procesamiento. También tengo entendido que el informe que se rinda a la Corte estará disponible a mi abogado y al fiscal.

Cualquier contestación a éstas preguntas las considerará el juez para decidir si es que se me concede libertad o se me mantiene encarcelado(a) mientras penda el juicio o si es que tenga que participar en algun programa de tratamiento tal como contra el abuso de drogas o el alcohol.

Declaraciones que haga al Oficial de Pre-Procesamiento en el transcurso de las funciones de los servicios de pre-procesamiento no podrán emplearse en mi contra en la cuestion de culpabilidad en un procedimiento penal. Falsa información pudiera perjudicar me libertad de pre-procesamiento.

Si se me encuentra culpable, ya sea después de un juicio o de declararme culpable, la información que brinda al Oficial de Pre-Procesamiento será disponible al Oficial de Probación para la investigación de mis antecedentes y para la preparación de un informe de pre-sentencia y dicha información pudira afectar mi sentencia.

Sé que tendo el derecho de hablar con un abogado antes de contestar cualquier pregunta. Si no puedo pagar por sus servicios, uno será nombrado para que me represente durante el interrogatorio.

He leído ésta forma o me la han leído y entiendo mis derechos.

_____ _____
FECHA FIRMA DEL ACUSADO

_____ _____
HORA AM PM FIRMA DEL OFICIAL DE SERVICIOS DE PRE-PROCESAMIENTO

Committee Notes

1. Rule CR-5A is a new rule that prescribes procedures for pretrial services' interview and report, and the management of defendants on supervision who are confidential informants.

2. Subsection (a) ensures that a defendant knows of his rights, and has the opportunity to invoke them, before being interviewed by the pretrial services officer. Appended to the rule is a form pretrial services uses to notify the defendant of his rights, and to advise the defendant that no adverse inference will be drawn from his invocation of his rights.

3. Subsection (b) provides the parties with easier access to pretrial services information, subject to the confidentiality requirements of 18 U.S.C. § 3153(c). The Committee believes that it is consistent with the statute for the pretrial services officer to provide a copy of the pretrial services report and recommendation to both the government and defense attorneys, and that the statute does not require the return of the report at the conclusion of any bail or other pretrial hearing. Cf. 12 ADMINISTRATIVE OFFICE OF THE U.S. COURTS, GUIDE TO JUDICIARY POLICIES AND PROCEDURES, Ch. 3, Pt. A(4)(D)(1) (1999) (subject to district court's practice and procedure, report must be returned to pretrial services officer at conclusion of hearing).

CR-5B. INITIAL APPEARANCE OF UNDOCUMENTED ALIEN DETAINED AS MATERIAL WITNESS

(a) Appearance. Upon the filing of an affidavit under 18 U.S.C. § 3144 alleging that an undocumented alien is a material witness, the witness must be brought before the court without unnecessary delay.

(b) Procedure. Upon presentation of an undocumented alien witness, the court must:

(1) consider, with the assistance of pretrial services, whether the witness may be released under 18 U.S.C. § 3142, including release under an available community release program; and

(2) appoint counsel to represent the witness under the Criminal Justice Act, 18 U.S.C. § 3006A, if the court determines that:

(A) the witness is financially unable to retain counsel, and

(B) the witness does not waive counsel.

(c) Detention. If the witness is ordered detained, the detention must accord with the provisions of Rule CR-15B.

Committee Note

Rule CR-5B is a new rule that prescribes procedures for initial appearances of undocumented aliens detained as material witnesses. Because undocumented alien material witnesses are illegally in the United States, the feasibility of their conditional release under 18 U.S.C. § 3142 depends on the continued cooperation of U. S. Pretrial Services Office, the U.S. Attorney, and the Immigration and Naturalization Service.

RULE CR-6A. THE GRAND JURY

Grand jurors' selection, qualification, summoning, and exemption or excuse from service are governed by Appendix D.

Committee Note

The language of Rule CR-6A has been amended as part of the general restyling of the local criminal rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

RULE CR-6B. DIVISION IN WHICH INDICTMENT MAY BE PRESENTED AND FILED.

(a) In General. A case may be presented to a grand jury and may be filed in the following divisions:

(1) any division in which the offense was committed, in whole or in part; or

(**2**) with leave of the district judge supervising the grand jury before which the case is presented, any division whose borders are contiguous to any division in which the offense was committed, in whole or in part.

(b) Multiple Offenses. A case involving multiple offenses committed in separate divisions that are joined for indictment under Federal Rule of Criminal Procedure 8(a), may be presented to a grand jury in, and may be filed in, any division in which any one of the joined offenses could be presented and filed under subsection (a).

(c) Multiple Defendants. A case involving multiple defendants who are joined under Federal Rule of Criminal Procedure 8(b), may be presented to a grand jury in, and may be filed in, any division in which any one of the joined defendants could be charged under subsection (a).

Committee Notes

1. Rule CR-6B is a new rule that prescribes procedures for presentment and filing of indictments in divisions of the district. The rule allows, in certain circumstances, for an indictment to be presented and filed in a division contiguous to the one in which the offense was committed.

2. Leave of the district judge under subsection (a)(2) will normally be sought only when indictment in a division other than that in which the crime was committed is thought necessary to ensure a speedy trial, to avoid prejudice against the defendant, or when doing so would be in the interest of justice. The Committee contemplates that leave of the district judge will be documented in writing. Prosecution in contiguous divisions is currently allowed in Appendix D, the Amended Plan for the Random Selection of Grand and Petit Jurors in the Western District of Texas. Subsection (a)(2) deviates from the procedures in Appendix D, which currently requires the approval of the chief judge.

RULE CR-12. PRETRIAL MOTIONS

(a) Motion by Defendant. Unless otherwise ordered by the court, the defendant must file any pretrial motion:

(1) within 10 days after arraignment; or

(2) if the defendant has waived arraignment, within 10 days after the latest scheduled arraignment date.

(b) Motion by the Government. Unless otherwise ordered by the Court, the government must file any pretrial motion by the latest of the following dates:

(1) within 11 days after receiving defendant's motions;

(2) within 21 days after the arraignment; or

(3) if the defendant has waived arraignment, within 21 days after the latest scheduled arraignment date.

Committee Notes

1. The language of Rule CR-12 has been amended as part of the general restyling of the local criminal rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

2. The form of motions and responses, and the time for filing a response, are governed by CR-47.

3. Notwithstanding the preference in the Federal Rules of Criminal Procedure for case-specific scheduling orders (see Committee Note, proposed amendment to Fed. R. Crim. P. 12(c)), the rule retains the practice of setting motions deadlines by local rule, recognizing that the practice is suitable for the vast majority of criminal cases filed in this district, and that the district court may set specific deadlines different from the rule in appropriate cases.

4. The rule retains the former rule's 10-day deadline for filing defense motions, and contemplates no substantive change to the current practice, which may vary from division to division.

5. The former rule provided that "all such motions shall be . . . served upon the United States Attorney within ten (10) days after arraignment or waiver of arraignment has been entered." Thus, the implication was that only defense motions were due within the specified time period. The rule now sets a time limit for motions by either the defendant or the government. Further, the rule clarifies that the triggering event for filing of pretrial motions is the latest scheduled arraignment date.

RULE CR-15A. DEPOSITION OF WITNESS OTHER THAN MATERIAL WITNESSES

(a) Manner Taken. Except in the case of the deposition of a material witness, an oral deposition ordered by the court under Federal Rule of Criminal Procedure 15, may be recorded stenographically or on videotape if taken in accordance with the "Guidelines for Non-Stenographic Deposition," set forth in Appendix I.

(b) Stenographic Deposition. The original of a stenographic deposition must be delivered to the party who sought the deposition after one of the following has occurred:

(1) the deponent has signed the original deposition;

(2) the deponent and all interested parties have waived on the record the signing by the deponent; or

(3) the stenographic reporter has certified that the deponent has failed to sign the deposition after giving reasonable notice of the availability of the transcript to the deponent and the deponent's attorney (if any).

(c) Videotape Deposition. The original of a videotape deposition must be delivered to the party who sought the deposition after one of the following has occurred:

(1) the deponent has reviewed the videotape and certified its accuracy; or

(2) the deponent and all interested parties have waived review and certification in writing; or

(3) the reporter has certified that the deponent has failed to sign an acknowledgment of review of the deposition after giving reasonable notice of the availability of the videotape to the deponent and the deponent's attorney (if any).

(d) Custody. The party who sought to take a deposition must maintain custody of the original transcript, or the original videotape deposition and certification, or any written waiver of certification. That party must make the deposition available for appropriate use by any party in a hearing or a trial of the case.

(e) Material Witnesses. The deposition of a material witness is governed by CR-15B.

Committee Note

The language of Rule CR-15A has been amended as part of the general restyling of the local criminal rules to make them more easily understood and to make style and terminology consistent throughout the rules. The rule has been revised to add procedures for the videotaping of depositions. The rule does not govern the depositions of detained material witnesses, which is addressed by Rule CR-15B.

RULE CR-15B. DEPOSITION AND RELEASE OF MATERIAL WITNESS IN CUSTODY

(a) Scope.

(1) This rule provides for the deposition and release of a material witness who:

(A) is held pursuant to 18 U.S.C. § 3144;

(B) is found by the court to be an alien illegally in the United States; and

(C) has not been released on conditions under 18 U.S.C. § 3142.

(2) This rule does not affect the determination whether a material witness should be released under 18 U.S.C. § 3142.

(b) Deposition.

(1) ***Entry and Service of Order*.**

(A) Immediately after a material witness described in subsection (a) makes his or her first appearance before the court, the officer must enter an order setting the time and place for taking the deposition of the witness. No motion or notice is required by either the witness or any party. The order must comply with Federal Rule of Criminal Procedure 15. A form order is appended to this rule.

(B) An order entered under subsection (b)(1)(A) will serve as the notice of deposition required by Federal Rule of Criminal Procedure 15(b). The clerk of the court must serve the order on counsel for all parties; on counsel for the material witness; on an interpreter; and on the U. S. Marshals Service.

(2) ***When Taken; Cancellation or Continuance*.**

(A) The court must order that the deposition be taken not later than 35 days after the witness first appeared before the officer.

(B) The deposition may be continued or canceled only on order of the court. If the government and the defendant or defendants reach an agreement disposing of related criminal charges before the deposition is taken, they must notify the court, which will then promptly determine whether to cancel or continue the deposition. The deposition cannot be continued beyond the 45-day deadline for release of the witness set out in subsection (c)(1).

(C) Subject to a finding of additional exceptional circumstances under Federal Rule of

Criminal Procedure 15(a), the court must cancel the deposition if the material witness is released on conditions of release before the scheduled date of the deposition.

(3) ***Discovery.*** The parties must exchange all required discovery reasonably in advance of the date of the deposition.

(4) ***Location.*** Unless impracticable, the deposition should be taken in a court facility.

(5) ***Attendance.***

(A) All parties and persons served under subsection (b)(1)(B) of this rule must attend the deposition, except that any defendant may waive attendance by filing a written waiver before the date of the deposition, in accordance with Federal Rule of Criminal Procedure 15(b) [15(c)(1)].[1]

(B) The U.S. Marshals Service must make available the witness and defendant in its custody, at the time and place of the deposition ordered by the court.

(6) ***How Taken.*** The deposition must be recorded by videotape. The U.S. Attorney's Office must provide a videographer to record the deposition, and will bear the costs and expenses of taking the deposition. Other expenses will be borne by the parties, except as provided in Federal Rule of Criminal Procedure 15(c) [15(d)].

(7) ***Review and Certification.***

(A) After the deposition is completed, the videotape recording must immediately be played back in the presence of the witness, the interpreter, and all parties attending the deposition, and their attorneys. Any corrections or modifications to the deposition must be recorded on the same videotape used to record the deposition, and should immediately follow the deposition on the recording.

(B) The deposition must be certified consistent with Federal Rule of Civil Procedure 30, except as otherwise provided by this rule or ordered by the court. It is not required for certification that the videotape recording be transcribed.

(C) The material witness and all interested parties may waive review and certification in writing, in accordance with Rule CR-15.

(8) ***Custody of Deposition.*** The government must maintain custody of the videotape deposition and certification, or any waiver of certification. Upon request, the

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[1] Citations in brackets are to subsections of proposed revisions to Rule 15, Fed. R. Crim. P.

government must provide a copy of the deposition to the witness or any defendant.

(9) ***Use as Evidence.*** The use and admissibility of the deposition are governed by Federal Rule of Criminal Procedure 15, the Federal Rules of Evidence, and applicable court precedent. The presiding judge should rule on any objections to the deposition at or before trial. Nothing in this rule relieves the proponent's burden of demonstrating the unavailability of the material witness under Federal Rule of Evidence 804(a).

(c) Release.

(1) ***Mandatory Deadline for Release.*** A material witness described in subsection (a) must be ordered released from the custody of the U.S. Marshals Service by the first to occur of the following deadlines:

(A) within 24 hours of the taking, and the certification or waiver of certification, of the witness' deposition; or

(B) within 45 days of the witness' first appearance before a court.

(2) ***Earlier Release.*** If the deposition is canceled under subsection (b)(2)(B), the court should determine promptly whether to order the release of the material witness from U.S. Marshals Service custody.

Committee Notes

1. Rule CR-15B is a new rule that prescribes procedures for deposing and releasing material witnesses in custody. The Committee notes that there is a conflict between Appendix I and CR-15B in that the appendix, which likely was drafted with civil depositions in mind, imposes the cost of copies on the party seeking the copy whereas CR-15B requires the government to furnish copies to the witness and defendant upon request. This conflict is addressed by language on the form order.

2. Notwithstanding subsection (b)(2)(B), the court may continue the deposition for "good cause." See Rule CR-1(e).

3. Subsection (b)(3) does not provide for discovery other than that ordered by the court. The Committee contemplates that the parties will exchange information as would be required as if the witness were testifying at trial, including discovery required by Fed. R. Crim. P. 15(d)[15(e)], Fed. R. Crim. P. 16, and Fed. R. Crim. P. 26.2; statements covered by the Jencks Act, 18 U.S.C. § 3500; and impeachment information under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963), and Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763 (1972).

4. The use of an interpreter should accord with 28 U.S.C. § 1827 and applicable directives of the

Administrative Office of the U. S. Courts. The government bears the burden of providing an interpreter for the deposition.

5. The rule does not require a written transcript of the deposition but leaves to the court and the parties to determine whether a written transcript is necessary in any given case. The Committee notes that, unlike the U. S. Attorney and the Federal Public Defender, private counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A, cannot obtain a written transcript without a court order. See 28 U.S.C. § 1915(c). The proposed order appended to the rule provides that a Criminal Justice Act panel attorney may request a written transcript.

Appendix to Local Court Rule CR-15B

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	CRIMINAL NO. SA- -CR-
,	§	
	§	
Defendants.	§	

ORDER SETTING MATERIAL WITNESS DEPOSITION

Before the Court is the matter of the taking of the deposition of material witnesses in the above-styled and numbered cause. The Court finds that _____ (names of material witnesses) are aliens not lawfully admitted to the United States, that they are material witnesses in the case styled United States v. (Name of Defendant, cause no.), being held pursuant to 18 U.S.C. § 3144, and that they have not been released on conditions pursuant to 18 U.S.C. § 3142. As such, the Court finds that this case presents "exceptional circumstances" and that the "interest of justice" requires the taking of the deposition of the material witnesses. Rule 15(a), Fed.R.Crim.P. The Court further finds that there will be no failure of justice if the material witnesses are released after their depositions have been taken and certified in accordance with 18 U.S.C. § 3144 and Local Court Rule CR-15B.

IT IS THEREFORE ORDERED that the depositions of _____(names of material witnesses) are set for ____(date and time) at _____(place).

IT IS FURTHER ORDERED that the depositions shall be recorded by videotape. The videotape must provide an electronic sound recording which is sufficient to comply with 28

U.S.C. §1827(d)(2). They also may be recorded by stenographic means at the party's own expense. Notwithstanding the foregoing, subsequent to the completion of the deposition, a CJA panel attorney may request that a stenographic transcript of all or part of a deposition. Each deposition shall be certified consistent with Rule 30, Fed.R.Civ.P. and Local Rule CR-15B, and shall be accomplished by the immediate playback of the videotape recording in the presence of the material witness, the interpreter, all parties attending the deposition, and their attorneys. Any corrections or modifications to the deposition shall be recorded on the same videotape, following the recording of the deposition. Playback of the recording and certification may be waived in writing in accordance with Local Rule CR-15A. The government shall retain custody of the videotape depositions and written statements of certification or waiver of certification pending trial. Notwithstanding Appendix I to the Local Rules, the government shall, upon request, promptly provide to any defendant, material witness or counsel, copies of the videotape deposition and written statements of certification or waivers of certification.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve a copy of this order on the following: All defendants, counsel for defendants, the material witnesses, counsel for the material witnesses, counsel for the government, an interpreter, and the United States Marshals Service.

IT IS FURTHER ORDERED that the United States Marshals Service shall make the named witnesses and defendants in their custody available on the date, time and place in conformity with this order. If any defendant desires to waive appearance, that defendant must file a written waiver with the Clerk of the Court prior to the date of the deposition.

IT IS FURTHER ORDERED that within 24 hours after the deposition and certification or waiver have been completed, the material witness shall be brought before the court for release from the custody of the U.S. Marshals Service.

RULE CR-17.1 MARKING EXHIBITS

A party must mark any exhibit it offers at a trial or hearing in accordance with Rule CV-16(f).

Committee Notes

1. Rule CR-17.1 is a new rule, consisting of the substance of former Rule CR-55(b), renumbered as Rule CR-17.1, to conform more closely to the organizational structure of the Federal Rules of Criminal Procedure. The language of Rule CR-17.1 has been amended as part of the general restyling of the local criminal rules to make them more easily understood and to make style and terminology consistent throughout the rules. The changes are intended to be stylistic only, except as noted below.

2. The rule extends the requirement to premark exhibits to hearings as well as trials, to reflect current practice.

RULE CR-18. PLACE OF TRIAL WITHIN DISTRICT

(a) Division in Which Prosecution and Trial May Occur.

(1) Unless a statute, other rule, or court order requires otherwise, the government may prosecute a case in any division in the district in which the offense was committed, in whole or in part.

(2) The court may fix trial in:

(A) any division within the district consistent with Federal Rule of Criminal Procedure 18; or

(B) any other division within the district, if the court is satisfied that there exists in the division where the prosecution is pending so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial.

(b) Multiple Offenses. In cases involving multiple offenses joined for trial under Federal Rule of Criminal Procedure 8(a), the court may fix the place of trial in any division in which any one of the joined offenses may be tried.

(c) Multiple Defendants. In cases involving multiple defendants joined for trial under Federal Rule of Criminal Procedure 8(b), the court may fix the place of trial in any division in which any one of the joined defendants may be tried.

Committee Notes

1. Rule CR-18 is a new rule that prescribes procedures for fixing the place of trial within the district.

2. Subsection (a)(2) does not limit the court's duty or discretion to transfer a proceeding to another district, as provided by Fed. R. Crim. P. 21(a). Subsection (a)(2)(B) is intended to clarify a specific circumstance in which transfer to another division may be required for the "prompt administration of justice" provided by Fed. R. Crim. P. 18.

3. Subsections (b) and (c) are not intended to affect or limit the court's discretion to sever as provided by Fed. R. Crim. P. 14.

4. The Committee contemplates that when a case is assigned for trial in another division, the clerk will cause the case to be assigned to a district judge in the transferee division in accordance with the plan for the random assignment of cases, unless the transferring judge orders that he or she will continue to handle the case after transfer.

RULE CR-24. TRIAL JURORS

(a) Selecting Trial Jurors.

(1) Trial jurors' selection, qualification, summoning, and exemption or excuse from service are governed by Appendix D.

(2) To assist the court in selecting a jury, each prospective juror must complete the juror information form set out in Appendix D-1.

(b) Bailiff's Oath.

The bailiff, or other special officer appointed to attend upon a jury, must take the following oath:

> "You solemnly swear that you will keep this jury during their retirement, in some convenient place removed from the presence of other persons; that you will not, without leave of the Court, suffer any person to speak to them; that you will not without such leave, hold or have any communication with them yourself, except to ascertain whether they have agreed upon their verdict and to attend to their needs; and that you will well and faithfully discharge your duties as bailiff. So help you God."

Committee Notes

1. The language of Rule CR-24 has been amended as part of the general restyling of the local criminal rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

2. Subsection (a) of the restyled rule deletes as unnecessary the reference to the statute and the title of the Plan of Implementation.

3. The revised rule removes the reference to the clerk administering the oath and changed the text of the oath only to reflect that the bailiff shall attend to the "needs" of the jurors, without further specification.

RULE CR-32. SENTENCE AND JUDGMENT

(a) Time of Sentencing. Except for good cause, the court should sentence the defendant within 60 days after the date of the verdict or entry of guilty plea.

(b) Time Limits Regarding the Presentence Report. If the defendant and the government waive the time limits under Federal Rule of Criminal Procedure 32, the following time limits apply.

(1) ***Disclosing the Report.*** The probation officer must give the presentence report to the defendant, the defendant's attorney, and the attorney for the government at least 24 days before sentencing, excluding intermediate weekends and legal holidays. Delivery of an extra copy of the presentence report to the defendant's attorney constitutes giving the report to the defendant.

(2) ***Reviewing the Report.*** Within 10 days after the presentence report is given, the attorney for the defendant must certify to the probation officer that the defendant has reviewed the presentence report and consulted with the attorney regarding the report.

(3) ***Objecting to the Report.*** Within 10 days after the presentence report is given, the parties must state in writing any objections to the report.

(4) ***Acting on Objections.*** Within 10 days after receiving objections, the probation officer may meet with the parties to discuss the objections, investigate further, and revise the presentence report as appropriate.

(5) ***Submitting the Report.*** At least 4 days before sentencing, the probation officer must submit the presentence report, any revision to the report, and any addendum to the court and the parties.

(c) Changing Time Limits. The court may, for good cause, change any time limit prescribed in subsection (b), except that the time limit for objecting to the presentence report may be shortened only with the consent of the defendant, the defendant's attorney, and the attorney for the government.

(d) Sentencing. At sentencing, the court may:

(1) allow a party, for good cause, to make a new objection before sentence is imposed;

(2) accept the presentence report as accurate, except with regard to any unresolved objection; and

(3) in resolving an objection, consider any reliable information presented by the probation officer, the defendant, or the government.

(e) Post-Sentencing Disclosures.

(1) ***Presentence Report***. After sentencing, the presentence report and its contents must remain confidential, except that the probation officer may disclose the presentence report or its contents to:

(A) the U.S. Sentencing Commission;

(B) the U.S. Parole Commission;

(C) the U.S. Pretrial Services Office;

(D) another U.S. Court;

(E) the Federal Bureau of Prisons, if a term of imprisonment is imposed; or

(F) any person as ordered by the court.

(2) ***Confidential Sentencing Recommendation***. Except as ordered by the sentencing judge, the probation officer's confidential sentencing recommendation must not be disclosed.

Committee Notes

1. The language of Rule CR-32 has been amended as part of the general restyling of the local criminal rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

2. Subsection (a) extends the usual time for sentencing after a finding of guilt from 45 days to 60 days. The U.S. Probation Office indicates that a 60-day time frame would better reflect current practice across the district. The subsection also adds a "good cause" proviso, expressly allowing for variation from the 60-day practice.

3. Subsection (b)(1) adds a substantive provision for calculating the deadline for disclosing the presentence report the same way that shorter time limits are calculated under Fed. R. Crim. P. 45(a)(2). This provision ensures that all the time limits regarding the presentence report are calculated in the same way.

4. Subsection (b)(3) deletes the former rule's reference to what must be included in the objections to the presentence report. This matter is covered by subsection (f)(1) of the restyled version of Fed. R. Crim. P. 32.

5. Subsection (b)(5) deletes the former rule's reference to what must be included in the addendum to the presentence report. This matter is covered by subsection (g) of the restyled version of Fed. R. Crim. P. 32.

6. Subsections (d)(1) and (d)(2) are taken from the former rule; they are substantially the same as subsections (h)(1)(D) and (h)(3)(A) of the restyled version of Fed. R. Crim. P. 32.

7. Subsection (e) deletes the former rule's prohibition on disclosing the presentence report to an inmate, instead providing generally that the presentence report remains confidential. Under subsection (e)(1)(F), any court of the district can order disclosure of a presentence report; under subsection (e)(2), by contrast, only the sentencing judge may order disclosure of the probation officer's confidential sentencing recommendation.

RULE CR-46. RELEASE FROM CUSTODY; REPORTS OF DETAINED MATERIAL WITNESSES.

(a) Management By Pretrial Services Officers of Defendants Working As Informants. The following procedures apply to a defendant under supervision of pretrial services working as an informant for a law enforcement agency:

(1) The law enforcement agency using a defendant as an informant must promptly notify the defendant's pretrial services officer.

(2) The pretrial services officer must provide the law enforcement agency a copy of the defendant's conditions of release and the pretrial services officer's intended supervision activities.

(3) The law enforcement agency must advise the pretrial services officer of any requirements of the investigation that will affect supervision activities or require a change in the conditions of release.

(4) The law enforcement agency must inform the pretrial services officer of any violations by the defendant of any conditions of release.

(b) Reports of Detained Material Witnesses.

(1) ***Government Report.*** Unless otherwise ordered by the court, government reports regarding detained witnesses under Federal Rule of Criminal Procedure 46(h) must be sent to:

(A) the judge presiding over the case in which the detainee is a witness;

(B) the judge who ordered the witness detained; and

(C) the Pretrial Services Office.

(2) ***Pretrial Services Office Recommendation.*** Unless otherwise ordered by the court, the Pretrial Services Office, within 7 days of receiving a government report regarding detained witnesses, must provide a recommendation as to each witness's continued detention or release. The recommendation must be provided to:

(A) the judge presiding over the case in which the detainee is a witness;

(B) the judge who ordered the witness detained; and

(C) if the Pretrial Services Office recommends a change in status, the attorneys for the detainee and for the parties to the case in which the detainee is a witness.

Committee Note

1. Rule CR-46 is a new rule that prescribes procedures for release from custody of informants and for making reports on detained material witnesses.

2. Subsection (a) incorporates into the local rules the terms of the July 18, 1995 Standing Order Regarding Management by Pretrial Services Officers of Defendants who are Confidential Informants.

3. Disclosure of a recommendation for change of status under (b)(2)(C) does not require that the basis for the recommendation be disclosed.

RULE CR-47. MOTIONS AND RESPONSES

(a) Requirements. When filing a motion or response, a party must:

(1) cite the legal authority upon which the party relies; and

(2) submit a proposed order stating the relief the party seeks.

(b) Time for Filing Response. If a party opposes a motion, the party must file its response with the clerk and serve a copy on all parties within 11 days after the party has received the motion.

Committee Notes

1. Rule 47 is a new rule consisting of portions of the substance of former CR-12, renumbered as CR- 47 to conform more closely to the organizational structure of the Federal Rules of Criminal Procedure and to make it clear that the requirements apply to all motions and responses and not only pretrial motions and responses. These changes are intended to be stylistic only, except as noted below.

2. The rule requires the submission of a proposed order with motions and responses.

RULE CR-49. SERVING AND FILING PAPERS

(a) Duplicate Papers. Any paper required to be filed under Federal Rule of Criminal Procedure 49(d) must be furnished to the clerk in duplicate. The clerk must mark and file the original and send the copy to the assigned judge.

(b) Proof of Service. Any paper required to be filed under Federal Rule of Criminal Procedure 49(a) must contain proof of service appearing on or affixed to the filing. Proof of service may be in the form of:

(1) an acknowledgment of service by the person served; or

(2) a statement of the date and manner of service and of the names of the persons served certified by the person who made service.

(c) Format of Papers.

(1) Any paper presented to the clerk for filing must:

(A) be typed or printed, double-spaced, on 8½ by 11 inch paper, without erasures or interlineation materially defacing it;

(B) be endorsed with the style of the case and the descriptive name of the pleading or document; and

(C) contain either:

(i) the mailing address, signature, state bar card number and telephone and fax numbers (including area code) of the attorney, if filed by an attorney; or

(ii) the mailing address, signature, and telephone number (including area code) of the pro se party, if filed pro se.

(2) Any proposed order must be completely separate from any other paper.

(d) Non-conforming Papers. The clerk must file any document not conforming to this rule and advise the court of the violation of the rule.

Committee Notes

1. The language of Rule CR-49 has been amended as part of the general restyling of the local criminal rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

2. Subsection (a) has been amended to delete some unnecessary language ("by the parties to said cause") and to delete the reference to the filing of depositions. The substance of subsection (a) is the same as Rule CV-5 (a).

3. Subsection (b) has been amended to delete the requirement of post filing acknowledgment as such practice has fallen into disuse.

4. Subsection (c) has been amended to delete unnecessary language ("state bar code card number").

RULE CR-55. REMOVAL OF RECORDS AND EXHIBITS

(a) Records.

(1) Except upon approval of the court, no record or paper in court files may be removed from the clerk.

(2) A party removing any record or paper must provide the clerk a receipt signed by the party or the party's attorney reflecting each record or paper removed from the clerk.

(b) Exhibits.

(1) ***Removal After Final Disposition.*** Within 60 days after final disposition of the case, including appeal, and denial of, or expiration of the time in which to file, a petition for writ of certiorari in the U.S. Supreme Court, the party who offered an exhibit must remove it from the clerk.

(2) ***Failure to Remove.*** Failure to remove any exhibit within 60 days of final disposition of the case may result in the clerk destroying or otherwise disposing of the exhibit.

Committee Notes

1. The language of Rule CR-55 has been amended as part of the general restyling of the local criminal rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

2. "Final disposition" has been clarified in subsection (b)(1) to include exhaustion of the pursuit of, or expiration of the time for seeking relief in the Supreme Court. This definition of final disposition is consistent with the interpretation of the one-year limitation applicable to a judgment of conviction becoming final for purposes of seeking post-conviction relief pursuant to 28 U.S.C. § 2255. See United States v. Gamble, 208 F.3d 536 (5th Cir. 2000).

3. The requirement that the receipt evidencing return of exhibits be signed by the party or attorney reflects current practice.

4. Former Rule CR-55(b) has been restyled as Rule CR-17.1 to conform more closely to the organizational structure of the Federal Rules of Criminal Procedure.

5. As a matter of practice exhibits often are removed by the parties immediately after trial. The clerk's policy and practice are set out in the Clerk's Guidelines for Handling Exhibits, which may be found at the Western District of Texas website at www.txwd.uscourts.gov.

RULE CR-58. PROCEEDINGS BEFORE MAGISTRATE JUDGES

(a) Authority of Magistrate Judges.

(1) The magistrate judges of this district are authorized to perform all duties assignable to magistrate judges as set forth in 28 U.S.C. § 636.

(2) The magistrate judges of this district are specially designated to exercise jurisdiction over misdemeanor offenses as provided by 18 U.S.C. § 3401.

(3) Proceedings before the magistrate judges are governed by the "Local Rules for the Assignment of Duties to United States Magistrate Judges," set forth in Appendix C.

(b) Paying a Fixed Sum in Lieu of Appearance.

(1) ***Waiver of Appearance and Forfeiture of Collateral.*** Unless otherwise ordered by a magistrate judge, a person charged with a petty offense as defined in 18 U.S.C. § 19, and listed in subsection (b)(2), may, in lieu of appearance:

(A) post collateral in the amount indicated for the offense;

(B) waive appearance before the magistrate judge; and

(C) consent to forfeiture of collateral.

(2) ***Offenses Subject to Forfeiture in Lieu of Appearance.*** The offenses for which collateral may be posted and forfeited in lieu of appearance by the person charged, together with the amounts of collateral to be posted, are identified in the exhibits referred to below, copies of which are available in the office of the clerk in each division of this court:

(A) any petty offense listed in the schedule of offenses designated as Exhibit A, occurring on a U. S. Military Installation within the Western District of Texas;

(B) any violation listed in Exhibit B, and set forth in Title 36, Code of Federal Regulations, Chapters 2-5, occurring in a National Park or National Recreation area situated within the Western District of Texas;

(C) any violation of Fish and Wildlife laws listed in Exhibit C, and set forth in16 U.S.C. § 703, 16 U.S.C. § 718a, 16 U.S.C. § § 851- 856, 18 U.S.C. § § 41, 42, 44 and Parts 10 and 16 of Title 50, Code of Federal Regulations, occurring within the Western District of Texas;

(D) any petty offense listed in the schedule of offenses designated as Exhibit D, involving the public use of Veterans Administration properties, occurring within the Western District of Texas;

(E) any violation of Title 36, Code of Federal Regulations, Chapter III, Part 327, (Corps of Engineers), listed in Exhibit E, occurring within the Western District of Texas;

(F) any petty offense listed in Exhibit F, set forth in 40 U.S.C. § 318 and Title 41, Code of Federal Regulations, Chapter 101, occurring on General Services Administration property within the Western District of Texas;

(G) any petty offense listed in Exhibit G, set forth in 16 U.S.C. §§ 433, 460, 670, 18 U.S.C. §§ 1361, 1852, 1853, 1856, 1857, 1858, 43 U.S.C. § 1061 and Title 43, Code of Federal Regulations, occurring on Bureau of Land Management property within the Western District of Texas; and

(H) any petty offense listed in Exhibit H, set forth in 39 U.S.C. § 401 and Title 39, Code of Federal Regulations, as made available to the United States Postal Service by Title VI of Public Law 93-143, State. 525, occurring on Postal Service property within the Western District of Texas.

(3) ***Punishment Other than Forfeiture of Collateral.*** If a person charged with an offense described in subsection (b)(2) fails to post and forfeit collateral, any punishment, including fine, imprisonment, or probation, may be imposed within the limits established by law upon conviction.

(4) Other Offenses. A person charged with a petty offense which is not listed in subsection (b)(2) must appear before a magistrate judge.

(5) ***Arrest and Appearance Before Magistrate Judge.*** **Nothing contained in this rule prohibits a law enforcement officer from:**

(A) arresting a person for the commission of any offense covered by this rule; or

(B) requiring the person arrested or charged for any offense covered by this rule to appear before a magistrate judge.

(6) ***Special Assessment.*** The collateral amounts set forth in Exhibits A through H include any special assessment required by 18 U.S.C. § 3013.

Committee Notes

1. Rule CR-58 is a new rule, consisting of the substance of former Rules CR-1(f) and CR-61. The language of Rule CR-58 has been amended as part of the general restyling of the local criminal rules to make them more easily understood and to make style and terminology consistent throughout the rules. The changes are intended to be stylistic only.

2. Subsections (b)(2)(F) and (b)(2)(H) correspond to subsection (a)(6) of former Rule CR-61 and conform to the separate schedules of collateral currently on file as Exhibits F and H. Exhibits A through H are also available on the Western District of Texas website at www.txwd.uscourts.gov in the Local Rules area.

SECTION III - ATTORNEYS

RULE AT-1. ADMISSION AND DISCIPLINE OF ATTORNEYS

(a) Any person licensed to practice law in the State of Texas and in good standing with the State Bar of Texas may make application to practice in the Western District of Texas upon certification he or she will comply with the requirements of this rule. Any person who is a member in good standing of the bar of any federal district court, federal circuit court, or the Supreme Court of the United States, or is active in the practice of the bar of any other state and who has five years of experience in the practice of law may make application to practice in the Western District of Texas upon certification he or she will comply with the requirements of this rule. Any person who resides within the Western District of Texas shall file his or her application with the Clerk in the division in which he or she resides.

(b) Application for admission shall be made on the form approved by the Court and in compliance with instructions therein. The Clerk shall provide, upon request, the approved application form and instructions. Completed applications shall be filed with the Clerk. Three letters of reference concerning the applicant's character and standing from licensed attorneys in the Western District of Texas must be included. If the attorney resides in another federal district, the applicant must additionally submit three letters of reference from attorneys licensed in that district. In addition, a statement by the attorney which illustrates willingness to appear before the committee or members of the Bar shall be provided.

(c) For the purposes of examining and reporting on the fitness and qualification for all attorneys for admission, a standing committee of no less than three nor more than seven members of the bar of this Court will be appointed in each division by the presiding judge(s) of each division. The period of time the members will serve on the committee will be determined by the judge or judges at the time of appointment. A majority of the members on a committee will constitute a quorum for the purpose of taking any action contemplated by this rule in those divisions having five or less committee members. In those divisions having more than five members, any three members will constitute a quorum.

(d) When an application is filed with the Clerk, it will immediately be referred to the committee. The applicant must submit with the application a current certificate of good standing (or equivalent documentation) from each bar in which he or she has an active practice along with the required letters of reference. The applicant must certify that he or she has read, is familiar with, and will comply with the Local Rules of the United States District Court for the Western District of Texas.

The committee may require the applicant to participate in the taking of a seminar specifically designed for those lawyers who wish to practice in the Western District of Texas.

An applicant who is not a member of the State Bar of Texas but who becomes a resident of the State of Texas shall, if not admitted to the practice before the courts of Texas within one year of becoming a resident of Texas, be again evaluated by the committee with regard to continuing membership of the bar in the Western District of Texas.

In the event the attorney fails to complete all requirements of this rule for admission to practice within one year following the date of the filing of the application, all records will be removed by the Clerk without further notice to the attorney. A new application for admission will be required.

(e) (1) After the petition has been referred to and approved by the committee, and upon motion of a member of this Bar in open court, the attorney may be admitted to the Bar of this Court. When admitted, the attorney will pay the statutory admission fee, which will be transmitted by the Clerk to the Treasury of the United States, together with an additional fee of twenty dollars ($20.00), which will be placed in the Non-Appropriated Fund Account to be used to defray actual expenses of the committee incurred in implementing this rule, and for such other purposes that the majority of the Advisory Committee for the Non-Appropriated Fund agree are appropriate. In addition, the attorney will take in open court either an oath or affirmation of the following:

> I do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this Court according to the best of my ability and learning, and with all good fidelity as well to the Court as to the client. That I will use no falsehood nor delay any person's cause for lucre or malice, and that I will support the Constitution of the United States. So help me, God.

(2) Any non-resident who has completed all requirements for admission to the Western District of Texas including the payment of the proper fee may, upon the concurrence of the presiding judge of the division where the application is pending, have the oath of admission administered by a United States District Judge in another district. The attorney will be required to file the oath with the Clerk of Court for the Western District of Texas before his or her name will be entered on the roll of attorneys for the district.

(f) (1) No attorney who has not been admitted to practice before this Court shall appear for, or represent, a party in any case except by permission of the judge before whom the case is pending. In the event permission is granted, the non-admitted attorney shall immediately pay to the clerk a twenty-five dollar ($25.00) pro hac vice fee.

(2) All attorneys admitted to practice before this Court are required to renew their membership with this Bar every three (3) years, the first three-year cycle beginning

January 1, 2002. Attorneys will submit to the Clerk a twenty-five dollar ($25.00) attorney renewal fee. Such fee must be paid within ninety (90) days of the beginning of each renewal cycle. If the renewal fee is not timely paid, the attorney's name will be removed from the attorney admissions rolls of this Court. That attorney must then reapply for admission to practice before this Court in compliance with the provisions found in paragraphs (a) through (e) above. Those attorneys who are, and continue to be, exempt from the attorney admissions requirements of this Court, or who are full-time judicial officers or attorneys with any federal, state, or other governmental entity, are not subject to payment of the attorney renewal fee.

(g) **(1)** United States Magistrate Judges shall have the authority to admit attorneys pro hac vice; such admissions shall be at the sole discretion of the United States Magistrate Judge to whom the motion for admission is addressed, and such admission shall be limited to the case proceeding at hand and shall not be considered admission to allow an attorney to practice generally before the United States District Court.

(2) United States Bankruptcy Judges shall have the authority to admit attorneys pro hac vice; such admissions shall be at the sole discretion of the United States Bankruptcy Judges to whom the motion for admission is addressed; any such admission shall be limited to the case or proceeding at hand and shall not be considered admission to allow an attorney to practice generally before the United States Bankruptcy Court or the United States District Court.

(h) If the committee does not approve an attorney for admission to practice, the attorney and the presiding judge(s) in the division wherein the application was filed will be notified in writing. The attorney may, within thirty days from receipt of written notice, appeal the committee's decision by a written request directed to the presiding judge(s) of the division with a copy of the request being delivered to the committee chairperson. Upon receipt of a copy of the written request, the chairperson will send the file of the committee to the judge for review. Thereafter, the presiding judge(s) may take such action as appropriate under the circumstances.

(i) Any attorney admitted to practice in this Court will be referred to the committee of the division wherein the attorney practices for appropriate review, investigation, and recommendation if said attorney:

(1) is convicted of a felony offense in any state or federal court;

(2) has his or her license to practice law in any jurisdiction suspended, revoked, or otherwise limited by any appropriate disciplinary authority;

(3) resigns his or her license to practice law in any state or federal district specified in his or her application;

(4) represents a client in such a fashion as to raise a serious question concerning the need to improve the quality of the attorney's professional performance; or

(5) presents an impediment to the orderly administration of justice and/or integrity of the Court.

Promptly after receipt of such reference, the chairperson of the committee will advise the attorney that the referral has been made. An initial screening subcommittee, consisting of one or more members of the full committee, chosen by the chairperson, will be formed. The subcommittee may request the attorney meet with it informally to explain the circumstances which gave rise to the reference, and may conduct such preliminary inquiry as it deems advisable. If after the inquiry the subcommittee determines further attention is not needed, it will so notify the referring judge and the committee's responsibility will end. The referring judge may then take such action, if any, as appropriate.

If the initial screening subcommittee determines that the matter warrants further action, it will notify and furnish the attorney with a copy of the subject matters which the subcommittee intends to refer to the full committee. In addition, it will advise the chairperson who will then initiate a review by the full committee or a quorum, as defined in this rule. Ten days after notice to the attorney, the committee may pursue such inquiries it deems appropriate including scheduling a hearing with the attorney present and shall thereafter make its recommendation in writing. The attorney will be advised of the recommendation, in writing, and will be given the opportunity to respond, to seek revision or revocation, and/or to suggest alternatives to the recommendation. The committee, after receiving the response, may modify, amend, revoke or adhere to its original recommendation and will thereafter notify the attorney and the referring judge of its final recommendation. The referring judge may then take such action, if any, that is appropriate.

It will be the obligation of any attorney who is a member of the bar of this district to cooperate with the committee so that it may effectively comply with its responsibilities under this rule. If an attorney refuses to meet with the committee, refuses to furnish it with an explanation of the circumstances which gave rise to any referral, or otherwise refuses to cooperate with the committee, the committee will advise the presiding judge(s) of the division wherein the attorney practices and the Chief Judge of this Court. Thereafter, the Chief Judge may take such action, if any, as appropriate or refer the matter to the presiding judge of the division in which the lawyer practices.

Any attorney of the bar of this Court who is subject to a reference under this rule or who is asked by the committee to furnish it with relevant information concerning any requirement of this rule will regard it to be an obligation as an officer of the court to cooperate fully with the committee. In addition, any attorney who is convicted of a felony offense in any state or

federal court; has his or her license to practice law suspended, revoked, or otherwise limited by any appropriate disciplinary authority; or resigns his or her license to practice law in any state or federal bar specified in the lawyer's application to be a member of the bar of this Court must notify the Clerk of this Court of such action immediately and the Clerk shall, in turn, notify the presiding judge(s) of the divisions wherein the attorney practices.

(j) All records of the committee pertinent to the implementation and administration of this rule will be kept confidential to ensure the flow of information to the committee, frankness in reporting, and preventing recriminations against sources of information, unless the Court orders otherwise. If the attorney in question files a written request with the committee to make the matter one of public record, then the entire record will be presented to the Chief Judge of the district of the division for an appropriate determination.

(k) When any judge of this district receives a recommendation from the committee regarding any member of the bar of the Western District of Texas and the circumstances warrant, the judge shall forward a copy of the committee's records and the Court's action regarding any attorney to the appropriate disciplinary authority of any bar that authorizes the attorney to practice law.

RULE AT-3. DESIGNATION OF LOCAL ATTORNEY

A judge to whom a case is assigned may in that case, in his discretion and upon notice, require an attorney appearing in this court who maintains his office outside of this district to designate a member of the Bar of this Court who does maintain an office within this district as co-counsel with the authority to act as attorney of record for all purposes. The attorney shall file with such designation the address, telephone number and written consent of such designee.

RULE AT-4. STANDARDS OF PROFESSIONAL CONDUCT

Every member of the bar of this Court and any attorney permitted to practice in this Court under Local Rule AT-1 hereof shall familiarize oneself with and comply with the standards of professional conduct required by members of the State Bar of Texas and contained in the Texas Disciplinary Rules of Professional Conduct, V.T.C.A. Government Code, Title 2, Subtitle G-Appendix and the decisions of any court applicable thereto, which are hereby adopted as standards of professional conduct of this Court. This specification shall not be interpreted to be exhaustive of the standards of professional conduct. In that connection, the Code of Professional Responsibility of the American Bar Association shall be noted. No attorney permitted to practice before this Court shall engage in any conduct which degrades or impugns the integrity of the Court or in any manner interferes with the administration of justice therein.

RULE AT-5. COURTROOM DECORUM

(a) The Canons of Professional Ethics were adopted by the American Bar Association as a general guide, because, as stated in the preamble, "No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life." The preamble further admonishes that the "enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned." In that spirit, all lawyers should become familiar with their duties and obligations as defined and classified generally in the Canons, the common law decisions, the statutes, and the usages, customs and practices of the bar.

(b) The purpose of this rule is to emphasize, not to supplant, certain portions of those ethical principles applicable to the lawyer's conduct in the courtroom. In addition to all other requirements, therefore, lawyers appearing in this court shall:

(1) Be punctual in attendance at court.

(2) Refrain from addressing one another in court by their first names.

(3) Refrain from all side-bar remarks.

(4) Refrain from leaving the courtroom while court is in session, unless it is absolutely necessary, and then only if the court's permission has been first obtained.

(5) See that only one of them is on his feet at a time, unless an objection is being made.

(6) Refrain from approaching jurors who have completed a case.

(7) Avoid, as much as possible, approaching the bench. In this connection, counsel should try to anticipate questions which will arise during the trial, and take them up with the Court and opposing counsel in chambers. If, however, it becomes necessary for an attorney to confer with the Court at the bench, the Court's permission should be obtained, and opposing counsel should be openly invited to accompany him.

(8) Refrain from employing dilatory tactics.

(9) Deliver jury arguments from the lectern placed in a proper position facing the jury. If it is necessary to argue from an exhibit, the Court will, upon request, grant permission to do so.

(10) Hand all papers intended for the Court to see to the clerk, who, in turn, will pass them up to the judge.

(11) Hand to the clerk, rather than the court reporter, any exhibits to be marked which have not previously been identified.

(12) Advise clients, witnesses, and others concerning rules of decorum to be observed in court.

(13) Give to the Bailiff or Marshal, as soon as convenient before the trial, a list of witnesses showing the probable order in which they will be called.

(14) Stand and use the lectern when interrogating witnesses, unless otherwise instructed by the Court; however, when interrogating a witness concerning an exhibit the Court may, upon request, grant permission to approach the witness stand or the exhibit, as the case may be, for that purpose.

(15) Never conduct or engage in experiments involving any use of their own persons or bodies except to illustrate in argument what has been previously admitted in evidence.

(16) Not conduct a trial when they know, prior thereto, that they will be necessary witnesses, other than as to merely formal matters such as identification or custody of a document or the like. If during the trial, they discover that the ends of justice require their testimony, they should, from that point on, if feasible and not prejudicial to their client's case, leave further conduct of the trial to other counsel. If circumstances do not permit withdrawal from the conduct of trial, lawyers should not argue the credibility of their own testimony.

(17) Avoid disparaging personal remarks of acrimony toward opposing counsel and remain wholly uninfluenced by any ill feeling between the respective clients. They should abstain from any allusion to personal peculiarities and idiosyncrasies of opposing counsel.

(18) Rise when addressing, or being addressed by, the judge.

(19) Refrain from assuming an undignified posture. They should always be attired in a proper and dignified manner, and should abstain from any apparel or ornament calculated to attract attention to themselves.

(20) Comply, along with all other persons in the courtroom with the following:

a. No tobacco in any form will be permitted at any time.

b. No propping of feet on tables or chairs will be permitted at any time.

c. No bottles, beverage containers, paper cups or other edibles shall be brought into the courtroom, except with permission of the Court.

d. No gum chewing or the reading of newspapers or magazines (except as a part of the evidence in a case) will be permitted while court is in session.

e. No talking or other unnecessary noises will be permitted while court is in session.

f. Everyone must rise when instructed to do so, upon opening, closing or declaring recesses of court.

g. Spectators must wear appropriate attire during court sessions. Lawyers, litigants, witnesses, jurors and court personnel shall wear formal business attire; that is, men shall wear both coat and tie and women shall wear suits or dresses. The Court, however, may excuse any person from this rule.

h. The photographing, broadcasting or televising of any judicial proceedings or of anyone directly or indirectly involved therein, whether court is in session or not, in or from a courtroom or any other part of a United States Courthouse, shall not be permitted. Tape recorders or other mechanical means of recording the proceedings of the Court shall not be introduced into a courtroom. The rule does not apply to such tape recorders or other mechanical devices utilized by, and under the direction and control of, a judicial officer or the official court reporter.

i. The photographing, broadcasting or televising of proceedings of any nature before United States Magistrate Judges, whether they take place on federal property, in the private office of the magistrate judge, or otherwise, shall not be permitted.

j. No person shall possess a burning tobacco product or smoke tobacco in any federal courthouse in the district.

(c) It is the duty of the lawyer not to release or authorize the release of information or opinion for dissemination by any means of public communication, in connection with pending or imminent criminal litigation with which he is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in the investigation shall refrain from making any extra judicial statement, for dissemination by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warm the public of any dangers, or otherwise to aid in the investigation.

From time of arrest, issuance of an arrest warrant or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer associated with the prosecution or defense shall not release or authorize the release of any extra judicial statement, for dissemination by any means of public communication, relating to that matter and concerning:

(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of dangers he may present;

(2) The existence of contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense;

(6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer during this period, in the proper discharge of his official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

During the trial of any criminal matter, including the period of selection of the jury, no lawyer associated with the prosecution or defense shall give or authorize any extra judicial statement or interview, relating to the trial or the parties or issues in the trial, for dissemination by any means of public communication, except that the lawyer may quote from or refer without comment to public records of the court in the case.

After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence a lawyer associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement for dissemination by any means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

Nothing in this rule is intended to preclude the formulation or application of more restricted rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

(d) In a widely publicized or sensational case, the Court on motion of either party or its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order. Such a special order might be addressed to some or all of the following subjects, among others:

(1) A proscription of extrajudicial statements by participants in the trial, including lawyers, parties, witnesses, jurors, and court officials, which might divulge prejudicial matter not of public record in the case.

(2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury and witnesses during the course of the trial to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers, and others, both in entering and leaving the courtroom, and courthouse, and during recesses in the trial.

(3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations.

(4) Sequestration of the jury on motion of either party or the Court, without disclosure of the identity of the movant.

(5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by statute, and that no photograph be taken or sketch made of any juror within the environs of the court.

(6) Insulation of witnesses from news interviews during the trial period.

(7) Specific provisions regarding the seating of spectators and representatives of news media, including:

a. An order that no member of the public or news media representative be at any time permitted within the bar railing;

b. The allocation of seats to news media representative in cases where there are an excess of requests, taking into account any pooling arrangement that may have been agreed to among the newsmen.

(e) All court personnel, including among others, marshals, deputy marshals, court clerks, bailiffs, law clerks and court reporters shall be prohibited from disclosing to any person, without authorization from the Court, information relating to a pending criminal case that is not part of the public records of the court. In addition, information concerning arguments and hearings held in chambers or otherwise outside the presence of the public shall not be divulged, and such personnel shall not discuss any case on trial with the attorneys or anyone else, and they shall refrain from criticizing any jury verdict or court decision.

RULE AT-6. QUALIFIED LAW STUDENTS AND UNLICENSED LAW SCHOOL GRADUATES

A qualified law student or a qualified unlicensed law school graduate who has been certified pursuant to Texas Revised Civil Statutes Art. 320a-1, Sec. 10(a), ["State Bar Act"] and the Texas Supreme Court's "Rules and Regulation Governing the Participation of Qualified Law Students and Qualified Unlicensed Law School Graduates in the Trial of Cases in Texas" shall be allowed to participate in hearings in this Court, with the permission of the Trial Judge or Magistrate Judge, under the following terms and conditions:

(1) That the student or unlicensed graduate has presented to the Local District Clerk's Office a copy (front and back) of his or her State Bar of Texas Identification Card;

(2) That the local District Clerk's Office shall keep a file of these copies for use by the Court;

(3) That by the presenting and filing of the copy of the Identification Card, the student or unlicensed graduate acknowledges that he or she has read and is familiar with the Western District of Texas Local Rules and will abide by them;

(4) That the student or unlicensed graduate will be accompanied in Court by a member of this Bar who appears as a supervising attorney on the student's or unlicensed graduate's Identification Card.

If the student or unlicensed law graduate is appearing with a member of the United States Attorney's Office for this District, the requirement for errors and omissions insurance shall be waived. The scope of participation of a student or unlicensed graduate in any hearing shall always be within the sound discretion of the Court.

RULE AT-7. UTILIZATION OF LAW STUDENTS AS INTERN LAW CLERKS TO JUDGES OF THE WESTERN DISTRICT OF TEXAS

(a) An eligible student may, with the approval of the student's law school dean or a faculty member of his or her law school and a judge of the Western District of Texas, serve as a part-time (intern) law clerk to that judge.

(b) In order to so serve, the law student shall:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two semesters or the equivalent;

(3) be enrolled in a course or program at his or her law school offering academic credit for serving as an intern law clerk to a judge; or

(4) be certified by the dean or a faculty member of his or her law school as being qualified to act as an intern law clerk. This certification may be withdrawn by the certifier at any time by mailing a notice to the judge supervising the student. Termination of certification by the certifier shall not reflect on a student's character or ability unless otherwise specified. A copy of such certification and decertification shall be filed with the Clerk of the Court;

(5) neither be entitled to ask for nor receive compensation of any kind from the court or anyone in connection with service as an intern law clerk to a judge (this shall not prevent a student from obtaining such financial aid as he or she would have been entitled to receive apart from service in the court);

(6) certify in writing, which certification shall be filed with the Clerk of the Court, that he or she has read and

a. is familiar and will comply with the Code of Professional Responsibility, Section 8, Article XII, Rules Governing the State Bar of Texas, Vol. 1-A, V.A.T.S., relevant provisions of the Code of Judicial Conduct for United States Judges, including Canons 3-A(4) and 3-A(6), and this rule, and

b. will abstain from revealing any information and making any comments at any time, except to court personnel as specifically permitted by the judge to whom he or she is assigned, concerning any proceeding pending or impending in this court while he or she is serving as an intern law clerk.

c. A judge supervising an intern law clerk may terminate or limit the clerk's duties at any time without notice or hearing and without showing of cause. Such termination or limitation shall not be considered a reflection on the character or ability of the intern law clerk.

d. An attorney in a pending proceeding may at any time request that an intern law clerk not be permitted to work on or have access to information concerning that proceeding and, without a showing that such restriction is necessary, a judge shall take appropriate steps to restrict the clerk's contact with the proceeding. Attorneys shall be deemed to have notice of the fact that the Western District of Texas has an intern clerkship program upon the adoption of these rules; if no objection to participation by an intern law clerk is made, any objection will be considered waived.

e. For the purposes of Canons 3-A(4) and 3-A(6) of the Code of Judicial Conduct for the United States Judges, an intern law clerk is deemed to be a member of the court's personnel.

f. Forms for designating compliance with this Rule shall be available in the United States District Clerk's Office.

g. This rule shall become effective as of January 1, 1985.

RULE AT-8. APPOINTMENT OF COUNSEL IN CRIMINAL AND CIVIL CASES

(a) CRIMINAL APPOINTMENTS.

(1) Participation. All attorneys licensed to practice in, and residing in the San Antonio Division of the Western District or Texas shall participate in the representation of persons under the Criminal Justice Act (CJA)as amended, 18 U.S.C. § 3006A, except as set out in paragraph (b) below. Appointments of attorneys will be determined by the attorney's experience and qualifications. Acceptance of CJA appointments is required for an attorney to maintain good standing to practice in the United States District Court for the Western District of Texas.

(2) Questionnaire. From time to time a questionnaire will be sent to all licensed attorneys who reside in the San Antonio Division of the Western District of Texas. This questionnaire will require detailed information as to qualifications and experience of each attorney. The completed questionnaires will be referred to the Classification Committee of the CJA Panel. Each newly licensed resident attorney in the San Antonio Division shall also complete and return the questionnaires as required. Any attorney who fails to comply in full with the questionnaire procedure shall have his or her license to practice in the Western District of Texas suspended until such time as the attorney shall complete and return the questionnaire.

(3) Classification. The Classification Committee shall review the questionnaires referred to it, along with such other information as may become known to the committee and assign each attorney either to "Panel A" or "Panel B". Panel A attorneys are attorneys deemed qualified by reason of experience, training, and ability to handle any CJA appointment on a first-chair basis. Panel B includes all other attorneys.

(4) Appointment of Counsel. The Judge or Magistrate making an appointment under the CJA shall determine, after reviewing the apparent complexity or magnitude of a particular case, whether to appoint an attorney from Panel A or Panel B, and may appoint one or more second-chair counsel. An attorney appointed from Panel A who desires and requires assistance may request the assignment of second-chair counsel from Panel B. Upon receiving such request, the Court or the Magistrate may assign one or more attorneys from Panel B to assist lead counsel, under the direction of lead counsel. Attorneys from both panels may receive compensation and expenses for services which are not duplicated by other counsel.

(5) Reclassification. The CJA Panel Classification Committee, with the assistance of the U.S. District Clerk, shall keep records of appointments and assignments and reassignments of Panel B attorneys, as well as dispositions of assigned cases. The CJA Panel Classification Committee shall:

(a) Annually review those records, along with such other information as may become known to it, and reclassify attorneys, when appropriate. Such review may also be initiated by a request for reclassification made to the Court by an attorney in Panel B.

(b) Meet periodically to transact such business as may be required by this Rule.

(6) Discipline. A Panel A attorney to whom a Panel B counsel has been assigned shall notify the appointing judicial officer of any dereliction or failure to participate by second-chair counsel. The Magistrate will screen and resolve these matters with a right of appeal to the Chief Judge for appropriate action.

(7) Exemptions. All attorneys licensed to practice in, and residing in the San Antonio Division of the Western District of Texas shall be subject to CJA appointments provided, however, that attorneys who have attained the age of 55 years, and who so request, shall be exempted from further participation.

(8) Law Student Participation. The Magistrate may assign qualified and certified law students or unlicensed law school graduates, in accordance with Local Rule AT-7, to assist Panel A and Panel B attorneys in providing CJA representation.

(b) CIVIL APPOINTMENTS.

All attorneys licensed to practice and residing in the San Antonio Division of the Western District of Texas have an obligation to accept appointments in civil cases under Title VII of the Civil Rights Act of l964, 42 U.S.C § 2000e-5(f)(1) and in proceedings in forma pauperis under 28 U.S.C. § 1915(D). The questionnaire referenced in Section (a)(2) of this Rule shall be used to determine which attorneys will accept civil appointments in lieu of receiving a criminal appointment. The name of each such attorney shall remain on the CJA Panel, but shall be appropriately asterisked to indicate that the attorney will accept civil appointments. When an attorney accepts a civil appointment under this procedure, his or her name will remain on the panel list, but when the attorney's name reaches the top of a list for a criminal appointment, it will automatically go to the bottom of the list.

Rule AT-8 shall become effective the 6th day of January, 1986, and shall be applicable only in the San Antonio Division until otherwise ordered by this Court.

RULE AT-9. CHANGE OF ADDRESS

Any attorney licensed to practice in this district who changes his or her office address shall, within 30 days after the change, file with the clerk a notice of change of address, showing the attorney's name, firm name, new address, and telephone number.

SECTION IV - APPENDICES

APPENDIX "A"
INFORMATION REQUIRED - MOTION FOR CLASS ACTION CERTIFICATION

When a class action allegation is set forth in a complaint, the plaintiff is directed to file within thirty (30) days after any defendant's first pleading is filed a motion for class action certification; otherwise, the request for class action certification is considered waived. Said motion to include but not limited to the following:

(1) A brief statement of the case.

(2) A statement defining the class plaintiff seeks to have certified including its geographical and temporal scope.

(3) A description of plaintiff's particular grievance and why that claim qualifies plaintiff as a member of the class as defined.

(4) Does the plaintiff contend that this action may be maintained under Rule 23(b)(1)? Under Rule 23(b)(2)? Under Rule 23(b)(3)? Explain why any section contended for is appropriate.

(5) A statement respecting the four prerequisites of Federal Rules of Civil Procedure 23(a). The statement shall set forth:

a. The anticipated number of class members and how this number was determined.

b. The common questions of law and/or fact involved.

c. The reasons why plaintiff's claim is typical of those of the other class members.

d. The reason why representation by the named plaintiff is adequate to protect the interests of the class. This part of the statement shall specifically answer the following questions:

(i) Is the claim of the named plaintiff presently or potentially in conflict with that of any members of the class?

(ii) Will the claims of the class require subclasses presently or in the future?

(iii) What is the prior experience of counsel for the plaintiff that would indicate capability to handle the lawsuit?

(iv) Is counsel presently representing or has he at any time represented, a class in any other class action, and if so, when and how many instances?

(v) How many cases is plaintiff's counsel now handling in which class action allegations are made?

(6) A statement describing any other pending actions in any court against the defendants alleging the same or similar causes of action.

(7) A statement that the attorney for the named plaintiff has discussed and thoroughly explained to the plaintiff the nature of a class action and potential advantages and disadvantages to the named plaintiff by proceeding in a class action rather than individually.

(8) A statement of the proposed notices to the members of the class and how and when the notices will be given, including a statement regarding security deposit for the cost of notices.

(9) A description of the extent of any settlement negotiations that have taken place and the likelihood of settlement with the named plaintiff on an individual basis. If such settlement is likely, include a statement specifying:

a. Whether or not counsel have any knowledge of any person who has relied on the fact that this suit was initially filed as a class action.

b. The manner in which counsel will protect the class in the event of settlement with the named plaintiff on an individual basis.

(10) A statement of any other matters that the plaintiff deems necessary and proper to the expedition of a decision on the motion and the speedy resolution of the case on the merits. Defendant shall serve and file a Motion in Opposition to the Plaintiff's Motion consistent with Rule CV7(d).

APPENDIX "B"

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
_____ DIVISION

_____,	§	
Plaintiff,	§	
	§	
vs.	§	**NO._____**
	§	
_____,	§	
Defendant.		

SCHEDULING ORDER

Pursuant to Rule 16, Federal Rules of Civil Procedure, the Court issues the following Scheduling Order:

1. A report on alternative dispute resolution in compliance with Local Rule CV-88 shall be filed by _____.

2. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties by _____, and each opposing party shall respond, in writing, by _____.

3. The parties shall file all motions to amend or supplement pleadings or to join additional parties by _____.

4. All parties asserting claims for relief shall file their designation of testifying experts and shall serve on all parties, but not file, the materials required by FED. R. CIV. P. 26(a)(2)(B) by _____. Parties resisting claims for relief shall file their designation of testifying experts and shall serve on all parties, but not file, the materials required by FED. R. CIV. P. 26(a)(2)(B) by _____. All designations of rebuttal experts shall be filed within 15 days of receipt of the report of the opposing expert.

5. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, within ___ days of receipt of the written report of the expert's proposed testimony, or within ___ days of the expert's deposition, if a deposition is taken, whichever is later.

6. The parties shall complete all discovery on or before _____. Counsel may by agreement continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.

7. All dispositive motions shall be filed no later than _____. Dispositive motions as defined in Local Rule CV-7(h) and responses to dispositive motions shall be limited to ____ pages in length.

8. This case is set for trial [docket call, or jury selection] on _____ at _____ ___.m. The parties should consult Local Rule CV-16(e) regarding matters to be filed in advance of trial.

SIGNED AND ENTERED this _____ day of _____, _____

_____
UNITED STATES DISTRICT JUDGE

APPENDIX "B-1"

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
_____ DIVISION

_____,	§	
Plaintiff,	§	
	§	
vs.	§	**NO. _____**
	§	
_____,	§	
Defendant.	§	

NOTICE OF RIGHT TO CONSENT
TO TRIAL BY MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636(c)(1), all full-time United States Magistrate Judges are authorized and empowered to try any civil case, jury or nonjury, with the consent of all parties to the lawsuit. Because of the crowded condition of the criminal docket in this District and the difficulty in reaching civil cases for trial, you may wish to consent to the trial of your case by a United States Magistrate Judge. Your decision should be communicated to the United States District Clerk's Office. Consent forms are available in the Clerk's office. Your consent to trial by a Magistrate Judge must be voluntary, and you are free to withhold consent without suffering any adverse consequences. If all parties do consent to trial of this case by a Magistrate Judge, the Court will enter an order referring the case to a Magistrate Judge for trial and for entry of judgment.

_____
UNITED STATES DISTRICT JUDGE

_____
Date

APPENDIX "C"

LOCAL RULES FOR THE ASSIGNMENT OF DUTIES TO UNITED STATES MAGISTRATE JUDGES

RULE 1. AUTHORITY OF UNITED STATES MAGISTRATE JUDGES

(a) Duties Under 28 U.S.C. §636(a)

Each United States Magistrate Judge of this Court is authorized to perform the duties prescribed by 28 U.S.C. §636(a), and may

(1) Exercise all the powers and duties conferred or imposed upon United States Commissioners by law and the Federal Rules of Criminal Procedure.

(2) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. §3146, and take acknowledgments, affidavits and depositions; and

(3) Conduct extradition proceedings, in accordance with 18 U.S.C. §3184.

(b) Disposition of Misdemeanor Cases --18 U.S.C. §3401. A magistrate judge may

(1) Try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. §3401;

(2) Direct the probation service of the court to conduct a presentence investigation in any misdemeanor case; and

(3) Conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States.

(c) Determination of Non-Dispositive Pretrial Matters--28 U.S.C. §636(b)(1)(A).

A magistrate judge may hear and determine any procedural or discovery motion or other pretrial matter in a civil or criminal case, other than the motions which are specified in subsection 1(d), infra, of these rules.

(d) Recommendations Regarding Case-Dispositive Motions--28 U.S.C. §636(b)(1)(B).

(1) A magistrate judge may submit to a judge of the court a report containing proposed findings of fact and recommendations for disposition by the judge of the following pretrial motions in civil and criminal cases:

A. Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;

B. Motions for judgment on the pleadings;

C. Motions for summary judgment;

D. Motions to dismiss or permit the maintenance of a class action;

E. Motions to dismiss for failure to state a claim upon which relief may be granted;

F. Motions to involuntarily dismiss an action;

G. Motions for review of default judgments;

H. Motions to dismiss or quash an indictment or information made by a defendant; and

I. Motions to suppress evidence in a criminal case.

(2) A magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

(e) Prisoner Cases under 28 U.S.C §§2254 and 2255.

A magistrate judge may perform any or all of the duties imposed upon a judge by the rules governing proceedings in the United States District Courts under §2254 and §2255 of Title 28, United States Code. In so doing, a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. Any order disposing of the petition may be made only by a judge.

(f) Prisoner Cases under 42 U.S.C. §1983 and 28 U.S.C. §2241.

A magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for the disposition of petitions filed by prisoners pursuant to 42 U.S.C. §1983 and 28 U.S.C §2241.

(g) Special Master References.

A magistrate judge may be designated by a judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. §636(b)(2) and Rule 53 of the Federal Rules of Civil Procedure. Upon the consent of the parties, a magistrate judge may be designated by a judge to serve as a special master in any civil case, notwithstanding the limitations of Rule 53(b) of the Federal Rules of Civil Procedure.

(h) Review of Administrative Agency Proceedings.

In a suit for judicial review of a final decision of an administrative agency, a magistrate judge may be designated by a judge to review the record of administrative proceedings and submit to the district judge a report and recommendation concerning (a) any defects in the agency proceedings which constitute a violation of statute or regulation or a violation of due process, (b) whether the matter should be remanded to the agency for additional factual determinations, and (c) whether the record contains substantial evidence in support of the agency decision.

(i) Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties -- 28 U.S.C. §636(c).

Upon the consent of the parties, a full-time magistrate judge may conduct any or all proceedings in any civil case which is filed in this court, including the conduct of a jury or non-jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. §636(c). In the course of conducting such proceedings upon consent of the parties, a magistrate judge may hear and determine any and all pretrial and post-trial motions which are filed by the parties, including case-dispositive motions.

(j) Other Duties.

A magistrate judge is also authorized to

(1) Exercise general supervision of civil and criminal calendars, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges;

(2) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil and criminal cases;

(3) Conduct arraignments in criminal cases not triable by the magistrate judge and take not guilty pleas in such cases;

(4) Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure;

(5) Accept waivers of indictment, pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure;

(6) Accept petit jury verdicts in the absence of a judge;

(7) Conduct necessary proceedings leading to the potential revocation of misdemeanor probation and revocation of felony or misdemeanor supervised release;

(8) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;

(9) Order the exoneration or forfeiture of bonds;

(10) Conduct proceedings for the collection of civil penalties of not more than $200 assessed under the Federal Boat Safety Act of l971, in accordance with 46 U.S.C. §1484(d);

(11) Conduct examinations of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure;

(12) Conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act;

(13) Perform the functions specified in 18 U.S.C. §4107, 4108, 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;

(14) Preside over a naturalization ceremony and administer the oath required by 8 U.S.C. §1448(a);

(15) Supervise proceedings on requests for letters rogatory in civil and criminal cases if designated by a district judge under 28 U.S.C. §1782(a);

(16) Serve as a member of the district's Speedy Trial Act Planning Group, 18 U.S.C. §3168;

(17) Consider and rule upon applications for administrative inspection warrants and orders permitting entry upon a taxpayer's premises to effect levies in satisfaction of unpaid tax deficits;

(18) Perform any additional duty as is not inconsistent with the Constitution and laws of the United States;

(19) Issue orders authorizing the installation and use of pen registers, traps and traces, and issue orders directing a communications common carrier, including a telephone company, to provide assistance to a named federal investigative agency in accomplishing the installation of traps, traces and pen registers.

(20) Conduct reaffirmation hearings pursuant to Title 11, U.S.C. 524 (c) and (d) and to approve/disapprove the reaffirmation agreements at such hearings and conduct Chapter 13 plan confirmation hearings in all cases unless objections have been filed.

RULE 2. ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

(a) General.

The method of assignment of duties to a magistrate judge and for the allocation of duties among the several magistrate judges of the court shall be made in accordance with orders of the court or by special designation of a judge.

(b) Misdemeanor Cases.

All misdemeanor cases shall be assigned, upon the filing of an information, complaint, or violation notice, or the return of an indictment, to a magistrate judge, who shall proceed in accordance with the provisions of 18 U.S.C. §3401 and Rule 58, Federal Rules of Criminal Procedure.

RULE 3. PROCEDURE BEFORE THE MAGISTRATE JUDGE

(a) In General

In performing duties for the court, a magistrate judge shall conform to all applicable provisions of federal statutes and rules, to the local rules of this court, and to the requirements specified in any order of reference from a judge.

(b) Special Provisions for the Disposition of Civil Cases by a Magistrate Judge on Consent of the Parties -- 28 U.S.C. §636(c).

(1) Notice.

The clerk of court shall notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be handed or mailed to the plaintiff or his/her representative at the time an action is filed and to other parties as attachments to copies of the complaint and summons, when served. Additional notices may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

(2) Execution of Consent

The parties may sign separate consent forms; however, consent forms signed by all the parties or their representatives will also be accepted. The consent forms should be sent to the clerk of court. Unless all parties have consented to the reference, the decision of each party as indicated on the consent forms shall not be made known to any judge or magistrate judge. No magistrate judge, judge, or other court official may attempt to persuade or induce any party to consent to the reference of any matter to a magistrate judge. This rule, however, shall not preclude a judge or magistrate judge from informing the parties that they have the option of referring a case to a magistrate judge.

(3) Reference.

After the consent form has been executed and filed, the clerk shall transmit it to the judge to whom the case has been assigned for approval and referral of the case to a magistrate judge. Once the case has been assigned to a magistrate judge, the magistrate judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the clerk of court to enter a final judgment in the same manner as if a judge had presided.

RULE 4. REVIEW AND APPEAL

(a) Appeal of Non-Dispositive Matters--28 U.S.C. §636(b) (1)(A).

Any party may appeal from a magistrate judge's order determining a motion or matter under subsection 1(c) of these rules, supra, within 10 days after issuance of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or a judge. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. A judge of the court shall consider the appeal and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The judge may also reconsider sua sponte any matter determined by a magistrate judge under this rule.

(b) Review of Case-Dispositive Motions and Prisoner Litigation--28 U.S.C. § 636(b)(1)(B).

Any party may object to a magistrate judge's proposed findings, recommendations or report under subsections 1(d), (e), (f), and (h) of these rules, supra, within 10 days after being served with a copy thereof. The clerk of court shall notify the parties of this right when serving copies of the report. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his/her discretion or where required by law, and may consider the record developed before the magistrate judge, making his/her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

(c) Special Master Reports--28 U.S.C. §636(b)(2).

Any party may seek review of, or action on, a special master report filed by a magistrate judge in accordance with the provisions of Rule 53(e) of the Federal Rules of Civil Procedure.

(d) Appeal from Judgments in Misdemeanor Cases--18 U.S.C. §3402.

A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal to the District Court within 10 days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the district court of the court of appeals.

(e) Appeal from Judgments in Civil Cases Disposed of on consent of the Parties--28 U.S.C. § 636(c).

(1) Appeal to the Court of Appeals.

Upon the entry of judgment in any civil case disposed of by a magistrate judge on consent of the parties under authority of 28 U.S.C. §636(c) and subsection 1(i) of these rules, supra, an aggrieved party shall appeal directly to the United States Court of Appeals for this circuit in the same manner as an appeal from any other judgment of this court.

(2) Appeal to a District Judge.

A. Notice of Appeal.

In accordance with 28 U.S.C. §633(c)(4), the parties may consent to appeal any judgment in a civil case disposed of by a magistrate judge to a judge of this court, rather than directly to the court of appeals. In such case the appeal shall be taken by filing a notice of appeal with the clerk of court within 30 days after entry of the magistrate judge's judgment; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of entry of judgment. For good cause shown, the 2magistrate judge or a judge may extend the time for filing the notice of appeal for an additional 20 days. Any request for such extension, however, must be made before the original time period for such appeal has expired. In the event a motion for a new trial is timely filed, the time for appeal from the judgment of the magistrate judge shall be extended to 30 days from the date of the ruling on the motion for a new trial, unless a different period is provided by the Federal Rules of Civil or Appellate Procedure.

B. Service of the Notice of Appeal.

The clerk of court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for all parties other than the appellant, or if a party is not represented by counsel, to the party at his last known address.

C. Record on Appeal.

The record on appeal to a judge shall consist of the original papers and exhibits filed with the court and the transcript of the proceedings before the magistrate judge, if any. Every effort shall be made by the parties, counsel, and the court to minimize the production and costs of transcriptions of the record, and otherwise to render the appeal expeditious and inexpensive, as mandated by 28 U.S.C. §636(c)(4).

D. Memoranda.

The appellant shall within 30 days of the filing of the notice of appeal file a typewritten memorandum with the clerk, together with two additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall also serve a copy of the memorandum on the appellee or appellees. The appellees shall file an answering memorandum within 30 days of the filing of the appellant's memorandum. The court may extend these time limits upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file his/her memorandum within the time provided by this rule, or any extension thereof, the court may dismiss the appeal.

E. Disposition of the Appeal by a Judge.

The judge shall consider the appeal on the record, in the same manner as if the case had been appealed from a judgment of the district court to the court of appeals and may affirm, reverse, or modify the magistrate judge's judgment, or remand with instructions for further proceedings. The judge shall accept the magistrate judge's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the magistrate judge to judge the credibility of the witnesses.

(f) Appeals from Other Orders of a Magistrate Judge.

Appeals from any other decisions and orders of a magistrate judge not provided for in this rule should be taken as provided by a governing statute, rule, or decisional law.

ADDENDUM
General Order of July 17, 1981

ON THIS DATE came on to be considered those causes in which Plaintiff, pursuant to 42U.S.C. § 405(g) and 5 U.S.C. §§ 701 et seq., seeks review of a decision by the Secretary of the Department of Health and Human Services upon an application for benefits under Title 42, Chapter 7, Subchapter II, United States Code, and

In accordance with the authority vested in the United States Magistrate Judge pursuant to the Amended Order for the Adoption of Rules for the exercise of Powers and Performance of Duties by United States Magistrate Judges, adopted in the Western District of Texas on April 17, 1980.

IT IS HEREBY ORDERED that all matters in which Plaintiff, pursuant to 42 U.S.C. § 405(g) and 5 U.S.C. §§ 701 et seq., seeks review of a decision by the Secretary of the Department of Health and Human Services upon an application for benefits under Title 42, Chapter 7, Subchapter II, United States Code, be referred by the Clerk to the United States Magistrate Judges sitting in the San Antonio Division in accordance with a random assignment procedure approved by the judges residing in the San Antonio Division.

IT IS FURTHER ORDERED that the United States Magistrate Judge is authorized to issue all orders necessary to his/her review, and that, upon completion of his/her review, he/she shall prepare a recommendation to the Court concerning the adjudication of these causes.

APPENDIX "D"

AMENDED PLAN PROVIDING FOR THE RANDOM SELECTION OF GRAND AND PETIT JURORS IN THE WESTERN DISTRICT OF TEXAS

This plan for the random selection of grand and petit jurors in this district is hereby adopted subject to the approval of the Reviewing Panel of the Fifth Circuit Judicial Council as required by the Jury Selection and Service Act of l968 and the Jury System Improvements Act of 1978 (Title 28 U.S.C. Sections 1861, et. seq.)

POLICY

It is the policy of this Court that all litigants in any division of this district entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community wherein this Court convenes; and that all citizens shall have the opportunity to be considered for service on grand and petit juries and shall have an obligation to serve as jurors when summoned for that purpose. However, under unusual or exigent circumstances, and upon approval by the chief judge, nothing herein shall preclude a grand jury exclusively drawn and empaneled in one division of this district from considering a matter chargeable in any division of this district provided that the borders of said divisions abut or are contiguous to each other. The use of the word "Court" in this plan shall contemplate the Chief Judge of this district, or any judge assigned by the Chief Judge to a particular division by order duly filed in such division and made a part hereof. The phrase "Chief Judge of this district" wherever used in this plan shall mean the Chief Judge of this district, or in the event of his absence, disability, or inability to act, the active District Judge who is present in the district and has been in service for the greatest length of time.

DISCRIMINATION PROHIBITED

No citizen shall be excluded from service as a grand or petit juror on account of race, color, religion, sex, national origin, or economic status.

MANAGEMENT AND SUPERVISION OF JURY SELECTION PROCESS

The Clerk of this Court or any authorized Deputy Clerk is empowered to manage the jury selection process in the various divisions of this district under the general supervision and control of the Chief Judge of this district, who will perform all duties imposed upon him which

cannot be lawfully delegated in accordance with the provisions of the Jury Selection and Service Act of l968. The counties comprising the various divisions of this district are as follows:

(1)	AUSTIN DIVISION:	Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington and Williamson.
(2)	DEL RIO DIVISION:	Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde and Zavalla.
(3)	EL PASO DIVISION:	El Paso.
(4)	PECOS DIVISION:	Brewster, Culberson, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Ward and Winkler.
(5)	SAN ANTONIO DIVISION:	Atascosa, Bandera, Bexar, Comal, Dimmit, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real and Wilson.
(6)	WACO DIVISION:	Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson and Somervell.
(7)	MIDLAND-ODESSA DIVISION:	Andrews, Crane, Ector, Martin, Midland and Upton.

RANDOM SELECTION FROM VOTER REGISTRATION LISTS

The random selection of names of prospective jurors to serve on grand and petit juries from the voter registration lists of the counties comprising each division may be made by the Clerk, any authorized deputy clerk, or any other person authorized by the Court to assist the Clerk either manually or through the use of a properly programmed electronic data processing system or device, or through a combination of manual and computer methods. This plan is based on the conclusion and judgment that the policy, purpose, and intent of the Jury Selection and Service Act of 1968 will be fully accomplished and implemented by the use of voter registration lists, as supplemented by the inclusion of subsequent registrants to the latest practicable date, as the source of an at-random selection of prospective grand and petit jurors who represent a fair cross-section of the community. This determination is supported by all the information this Court has been able to obtain after diligent effort on its part and after full consultation with the Fifth Circuit Jury Working Committee and the Judicial Council of the Fifth Circuit.

As required by the Judicial Conference of the United States, the Clerk will submit a report to the Court within six months after each periodic refilling of the master jury wheel giving general data relating to the master jury wheel, the date the master jury wheel was last filled, the source and number of names placed in the wheel and related information, an analysis of a random sampling of race and sex of a minimum of 500 completed and returned qualification forms, and an analysis of a random sampling of race and sex of a minimum of 500 names drawn from the qualified jury wheel. Also, within nine months after the master jury wheel is refilled the Clerk will provide the Court with a comparison of jury wheel data against census information. These reports will be retained by the Court as one of the jury wheel records.

DISCLOSURE OF NAMES OF JURORS

In each division of this district, the names of prospective grand jurors and/or petit jurors drawn from the Qualified Jury Wheel shall not be disclosed prior to the date of appearance and qualification of such jurors, unless otherwise directed in a division by the Chief Judge of this district, or by the judge assigned by the Chief Judge to that particular division by appropriate order; provided, however, the Court in any case may keep such names confidential for such period of time as the interest of justice may require. "Shall be disclosed" means shall be kept on file with the Clerk of the Court as a public paper.

QUALIFICATIONS TO SERVE

Any person shall be deemed qualified to serve on grand and petit juries in this Court unless he: (1) is not a citizen of the United States eighteen years of age who has resided for a period of one year within the judicial district or (2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form; or (3) is unable to speak the English language; or (4) is incapable, by reason of mental or physical infirmity, to render satisfactory jury service, or (5) has a charge pending against him for the commission of, or has been convicted in a State or Federal Court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored. In any two-year period, no person shall be required to (1) serve or attend court for prospective service as a petit juror for a total of more than thirty days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

EXCLUSIONS OR EXCUSES FROM JURY SERVICE

Except as provided herein, no person or class of persons shall be disqualified, excluded, excused or exempted from service as jurors; provided, that any person summoned for jury service may be (1) excused by the Court, upon a showing of undue hardship or extreme inconvenience, for such period as the Court deems necessary, at the conclusion of which such person shall be summoned again for jury service, or (2) excluded by the Court on the ground that such person may be unable to render impartial jury service or that his service as a juror would be likely to disrupt the proceedings, or (3) excluded upon peremptory challenge as provided by law, or (4) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown, or (5) excluded upon determination by the Court that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. Any exclusion pursuant to clause (5) shall be in accordance with Section 1866(c) of Title 28 U.S.C. Whenever a person is dis-qualified, excused, exempted or excluded from jury service, the Clerk shall note in the space provided on the juror's qualification form the specific reason therefor. Jury service by members of the following occupational classes or groups of persons would entail undue hardship or extreme inconvenience to the members thereof, and the excuse of such members will not be inconsistent with the Act, and shall be granted upon individual request:

(1) Persons over seventy (70) years of age.

(2) Persons who have, within the past two (2) years, served on a federal grand or petit jury.

(3) Persons having active care and custody of a child or children under ten (10) years of age whose health and/or safety would be jeopardized by their absence for jury service; or a person who is essential to the care of aged or infirm persons.

(4) All physicians, dentists, registered nurses, and attorneys engaged in actual practice.

(5) All members of the clergy engaged in the active discharge of their ministerial duties.

(6) Persons who serve without compensation as a volunteer firefighter or member of a rescue squad or ambulance crew for a federal, state or local government agency.

(7) Federal Law Enforcement Officers such as members of the Federal Bureau of Investigation, Postal Inspectors, Customs Agents, members of the United States Border Patrol, United States and Deputy United States Marshals, etc.

EXEMPTIONS FROM JURY SERVICE

The exemption of members of the following occupational classes or groups of persons is in the public interest, consistent with law, and accordingly members of such groups are barred from jury service;

(1) Members in active service in the Armed Forces of the United States;

(2) Members of the fire or police departments of the State or any subdivision thereof;

(3) Public officers in the executive, legislative or judicial branches of the government of the United States or any State, district, territory, or possession or subdivision thereof, who are actively engaged in the performance of official duties.

MASTER JURY WHEEL

The Clerk shall provide for a Master Jury Wheel into which the names of those selected at random in each division shall be placed. The total number of names placed in the Master Jury Wheel for each division shall be as reflected on Exhibit A attached hereto and made a part hereof for all purposes, but in no event shall the number of names for any division be less than one thousand (1,000). The court may order additional names to be placed in the Master Jury Wheel as and when needed. From time to time, as directed by the Court, the Clerk in any division shall publicly draw at random from the Master Jury Wheel the names of as many persons as may be required for jury service. The Clerk shall mail to every person whose name is so drawn, a juror qualification form, with instructions to fill out and return the form, duly signed and sworn, to the Clerk by mail within ten (10) days. If the person is unable to fill out the form, another shall do it for him, and shall indicate that he has done so and the reason therefor. In drawing the names, allowance should be made for the possibility that some forms will not be returned, that some individuals may be exempt by law, and that others may not be able to comply with the statutory qualifications. Any person who fails to return a completed juror qualification form as instructed may be summoned by the Clerk to appear and fill out such a form: provided, that any person who returns an executed juror qualification form by mail, and who is subsequently summoned for jury service, may be required at the time of his appearance to fill out another juror qualification form in the presence of the Clerk. Any person who fails to appear as directed, or who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror, shall be subject to the provisions of Section 1864(b) of Title 28 U.S.C. The Master Jury Wheel shall be emptied and refilled, pursuant to the procedure set forth in the Plan, not later than September 1, 1981; and thereafter every two years between January 1 and September 1.

JUROR QUALIFICATION FORM

The juror qualification form shall elicit the information contemplated by the questions reflected on the form prescribed by the Administrative Office of the United States Courts, pursuant to Section 1869(h) of Title 28, U.S.C. Upon recommendation of the Clerk, or on its own initiative, the Court shall determine solely on the basis of information provided on the juror qualification form, and other competent evidence, whether a person is unqualified for, or exempt, or to be excused or excluded from jury service, and such determination shall be entered by the Clerk in the space provided on the juror qualification form.

QUALIFIED JURY WHEEL

The names of grand and petit jurors for each division shall be publicly drawn at random as defined in 28 U.S.C. 1869(k), and in a manner as prescribed in Exhibit B, from the Qualified Jury Wheels containing the names of not less than 300 qualified persons in such division at the time of each drawing. Into such wheel shall be placed from time to time as needed the names of persons drawn from the Master Jury Wheel, who are deemed to be qualified as jurors and not exempted or excused. The Qualified Jury Wheel shall be emptied and refilled, pursuant to the procedure herein prescribed, after the Master Jury Wheel has been emptied and refilled but not later than October 1, 1981 and thereafter every two years between January 1 and October 1. Prospective jurors in each division may be summoned separately to serve exclusively as either grand or petit jurors; or prospective jurors may be summoned to appear at the same time for later assignment to either the grand jury or the petit jury panel, in which latter event, the Clerk shall in open court and in the presence of all jurors, draw at random from a box containing the names of all persons summoned for service as either grand or petit jurors, a sufficient number to be then and there sworn as grand jurors, and the remainder shall be sworn as petit jurors. In either event, the Clerk shall prepare a separate list of names of persons assigned to grand and petit juries. When the Court orders a grand and/or petit jury to be drawn for any division or divisions, the Clerk shall issue summonses for the required number of jurors. Service of summonses may be made by personal service, first class mail, or by registered or certified mail. If service is to be made by first class mail or by registered or certified mail, the summonses may be served by the Clerk or his duly designated deputy who shall make affidavit of service. If service is effected by registered or certified mail the addressee's receipt shall be filed with the affidavit of service. Nothing herein precludes the Marshal from making service by registered or certified mail provided that the Marshal attach to his return the addressee's receipt for the registered or certified mail. Any unanticipated shortage of petit jurors can be supplied only by drawing the names of additional jurors from the Qualified Jury Wheel for that division. A Grand Jury drawn and empaneled in one division of this district may consider cases triable in any division of this district provided that the borders of said divisions abut or are contiguous to each other.

This amended plan shall become effective upon the approval of the reviewing panel as required by 28 U.S.C. §1863(a) at which time a copy shall be filed with the Clerk in each division of the district.

EXHIBIT "A"

To arrive at the total number of names to be placed in the Master Jury Wheel at each division of the Court, the Clerk, or any authorized deputy, will add together the total number of registered voters for the particular division. The number taken as the total for each county will be based on the official count of voters registered by county. The Clerk, with the approval of the Court, will determine the number of names needed for the Master Jury Wheel and will divide the total number of names on the voter registration lists by the number needed.

The result is referred to herein as the "quotient." For example, if the total number of names on the voter registration lists at a particular division point is 320,000 and it is determined that 8,000 names are needed for the Master Jury Wheel, the "quotient" would be 40 and the Clerk would therefore take every fortieth registered voter's name for the Master Jury Wheel.

Electronic data processing methods may be used by the Clerk for selecting and copying names from the voter registration lists of those counties that maintain these lists in machine readable forms such as punched cards, magnetic tapes, or magnetic discs. In smaller counties currently maintaining their voter lists in handwritten or printed form, the Clerk may employ a combination of methods whereby names are initially selected from the voter list manually and then recorded by electronic machine methods. In lieu of making an actual, physical count of names on those voter lists where names are to be selected manually, a measuring device that expresses name intervals in terms of inches of space on a page may be used providing it substantially approximates the desired "quotient" intervals between selected names that an actual count would produce.

After determining the "quotient," the Clerk shall establish a starting number by preparing paper slips, each reflecting a different number from one to the same number as the "quotient." The numbers shall then be placed in an appropriate box and thoroughly mixed, after which one number shall be publicly drawn at random. This number will locate on the voter registration list the first name to be selected. The same starting number will be used on the voter registration list of each county in the division. If additional names are from time to time needed for the Master Jury Wheel in any division, they may be obtained by repeating the foregoing procedure using the same voter registration list, except that the numbered slip or slips previously used shall be eliminated and a new beginning number shall be publicly drawn from the box at random.

EXHIBIT "B"

Upon receipt of an order to draw the names of prospective grand and petit jurors from the qualified jury wheel, the Clerk will post a public notice of the date and time for calculating an increment number and selecting a starting number for the first name to be selected from the qualified wheel.

The increment number will be determined by dividing the total number of names remaining in the qualified wheel by the number of prospective jurors to be summoned.

The starting number will be publicly drawn at random from slips of paper numbered consecutively from one (1) through the increment number plus the remainder group.

For example, if there are 2,250 names in the qualified jury wheel and a panel of 85 jurors is to be summoned, the increment number would be 26 (2,250 divided by 85 = 26.47). The remainder group is determined by multiplying the increment number (26) by the number of jurors to be summoned (85) and subtracting the result (2,210) from the number of jurors in the qualified jury wheel (2,250). The remainder equals 40. Therefore, the range of numbers for selecting a starting number would be 1 through 66 (26 + 40 = 66). Accordingly, if the starting number of five (5) was randomly drawn, jury selection would start with the fifth name in the qualified wheel and the Clerk would select every 26th name from the qualified wheel until 85 jurors' names are selected.

Electronic data processing methods may be used by the Clerk for selecting the names of prospective grand and petit jurors from the qualified jury wheels.

JUROR QUALIFICATION QUESTIONNAIRE

(Please answer Each Question in BLACK Ink)

NAME: _____

LAST NAME FIRST NAME MIDDLE INITIAL

PLACE OF BIRTH:	AGE	HOW LONG HAVE YOU LIVED IN THIS STATE?	NAME OF THE COUNTY IN WHICH YOU RESIDE:
_____	____	_____	_____

MARITAL STATUS (Check [√] One): SINGLE [ ] MARRIED [ ] WIDOWED [ ] SEPARATED [ ] DIVORCED [ ]

NUMBER OF CHILDREN: _____ **AGES:** _____

EMPLOYMENT INFORMATION:

If employed, your occupation or business: _____

If retired, occupation before retirement: _____

Spouse's occupation: _____

Are you a salaried employee of the U.S. Government? YES [ ] NO [ ] **The following are exemptions (if you qualify, please check one of the following) (a) Members on active duty in the armed forces of the United States [ ] (b) Members of Fire or Police Department of any state [ ] (c) Public officers in the Executive, Legislative, or Judicial Branches of the Government of the United States or any state who are actively engaged in the performance of official duty [ ]. 28 U.S.C. § 1863 (6).**	**Have you or your spouse ever been employed by a law enforcement agency? YES [ ] NO [ ]** **If your answer is yes, give agency and dates of employment:** _____ _____ **If, under 28 U.S.C. § 1863 (5)(B), you are volunteer safety personnel, upon individual request you may be excused from jury service. Do you wish to claim this as an excuse? YES [ ] NO [ ]**

PERSONAL INFORMATION: **(Information concerning race is required solely to enforce nondiscrimination in jury selection and has no bearing on an individual's qualifications for jury service {28 U.S.C. § 1862})**

SEX: MALE [ ] FEMALE [ ] RACE: WHITE [ ] BLACK [ ] ASIAN [ ] NATIVE AMERICAN [ ] OTHER [ ]
ARE YOU HISPANIC? YES [ ] NO [ ]

EDUCATION: GRADE SCHOOL [ ] HIGH SCHOOL [ ] COLLEGE [ ] POST COLLEGE [ ]

Do you have any physical or mental infirmity which would impair your capacity to serve as juror?

YES [ ] NO [ ] If yes, please give nature of infirmity. _____

_____

_____

Have you or any member of your immediate family, to the best of your knowledge, been the subject of any audit or other tax investigation by the Internal Revenue Service? YES [ ] NO [ ]
If yes, please describe: _____

_____

(PLEASE COMPLETE BOTH SIDES OF THIS QUESTIONNAIRE)

Have you ever been charged with any criminal offense other than a traffic ticket?

YES [ ] NO [ ]

If yes is checked, indicate the type of case:_____

Are any charges now pending against you for a state or federal crime punishable by imprisonment for more than one year?

YES [ ] NO [ ]

Have you been convicted of a state or federal crime punishable by imprisonment for more than one year?

YES [ ] NO [ ]

If yes is checked, were your civil rights restored? YES [ ] NO [ ]

CIVIL SUITS:

Have you ever filed or been filed against for discrimination? YES [ ] NO [ ]

If yes, give the date and nature of claim;_____

Have you ever been a plaintiff or defendant in a lawsuit? YES [ ] NO [ ]

If yes, give the type of case;_____

Have you ever been a witness in court? YES [ ] NO [ ]

If yes, give the type of case;_____

Have you ever served on a jury? YES [ ] NO [ ]

Please check all of the following which apply:

Grand Jury [ ] Petit Jury [ ] Criminal Case [ ] Civil Case [ ]

Have you ever had any specialized training in any of the following?

Check all that apply: Legal [ ] Paralegal [ ] Medical [ ] Banking [ ] Finance [ ] Engineering [ ]

QUALIFICATIONS FOR JURY SERVICE Please check [√] whether or not you:	YES	NO
Are a citizen of the United States		
Are 18 years of age or older		
Have resided for a period of one (1) year within this Judicial District (Counties in this district are: Atascosa, Bandera, Bexar, Comal, Dimmit, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real, Wilson, Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington, Williamson, Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde, Zavalla, El Paso, Brewster, Culberson, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Ward, Winkler, Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson, Somervell, Andrews, Crane, Ector, Martin, Midland and Upton.)		
Are able to read, write, and understand the English language		
Are able to speak the English language		

APPENDIX "E"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

APPLICATION FOR ADMISSION

Instructions: Type or print your answers. Answer all questions fully. If the question does not apply to you, answer "NA". An incomplete response will delay processing of your application. Where the space provided is insufficient, answer on additional sheets, with reference to the question.

1. (a) Full Name _____
(Last) (First) (Middle)

(b) If you have ever been known by any other name, state the name and the reason for using it: _____

_____

(c) Your name as you wish it to appear on the register:

_____

2. (a) Date of birth: _____

(b) Place of birth: _____

(c) If not native born, give date and place of naturalization: _____

_____

3. Business Name: _____

4. Business Address: _____

_____ Zip Code _____

5. Business Telephone: (_____)_____

6. Residence Address: _____

_____ Zip Code _____

7. Residence Telephone:(____)_____

8. Social Security Number: [1] _____

9. State Bar I.D. Number: _____
(Specify state if other than Texas)

10. List states, federal possessions and territories in which you have been admitted to practice law by the highest court. Indicate the year admitted, status and areas of certified specialization. State Year Admitted Current Standing Specialization.

11. List federal courts to which you have been admitted. Indicate the year admitted and current status.

Court	Year Admitted	Current Standing

12. List your law school, the date of graduation, and the degree received. If you did not graduate from a law school, please describe your law study in detail.

_____

_____

_____

[1] Attorneys are requested to provide their Social Security Number in order to assist the court in maintaining the integrity of its records.

13. Indicate any grievances or involuntary removals filed against you as a lawyer. Describe the circumstances in detail.

14. Describe in detail charges, arrests, or convictions for criminal offenses(s). Omit minor traffic offenses.

_____

_____

_____

ANSWER THE FOLLOWING QUESTIONS "YES" OR "NO" IN THE BLANK PROVIDED; IF "YES", EXPLAIN FULLY ON A SEPARATE SHEET.

15. (a) Have you ever been denied admission to the bar of any State (including the District of Columbia) or any federal court? _____

(b) Have you ever been disbarred, suspended from practice, reprimanded, censured or otherwise disciplined or disqualified as an attorney? _____

(c) Has any adverse action, formal or informal, been taken against you or your license to practice law by any grievance committee, court, or other disciplinary body or committee? _____

16. Have you ever held a bonded position in connection with which anyone has sought to recover on your bond, or made a claim for any alleged default? _____

17. In connection with questions 17(a) through (c), the detailed explanation of any affirmative answers shall include dates, exact name and address of the court, if any, the case number, and disposition.

(a) Have you ever been charged with any violation of any law, other than minor traffic violations? _____

(b) Have you ever been charged with fraud, formally or otherwise, in any civil, criminal, bankruptcy, or administrative case or proceeding? _____

(c) Have you ever been denied a discharge in bankruptcy, or had your discharge in bankruptcy revoked? _____

18. Are there any unsatisfied judgments against you, whether barred by limitation or not? _____

(If so, give names and addresses of creditors, amounts, dates and nature of judgments, courts, and reasons for non-payment.)

19. I swear that the information provided in the foregoing application including attachments, if any, is true and correct. I acknowledge that by accepting admission to this Court I am subjecting myself to the discipline of this Court. I further certify that I have read and am familiar with the Federal Rules of Civil Procedure and Local Rules of this court and alternative dispute resolution procedures of the Western District of Texas and will advise clients in any actions pending in this court regarding alternative dispute resolution procedures. I further certify, if requested, I am willing to appear before this court or any Committee appointed to test the qualifications of applicants for admission to practice before this Court.

I declare under penalty of perjury that the foregoing is true.

_____ _____

Date **Signature**

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____day of _____, 20____, at_____ .

(SEAL)

_____

Notary Public or Deputy Clerk of this Court.

Appendix F

[Deleted Effective: December 1, 2002]

1. Appendix F has been deleted because it has become obsolete as a result of the passage of time and amendments to the Criminal Justice Act. The CJA (18 U.S.C. § 3006A, *et seq*.) and its implementing regulations adequately address the fee reimbursement issues covered by Appendix F, and to continue to address the issues in an Appendix would require frequent amendments to keep it current. Further, the other matters addressed in Appendix F in the nature of guidance to appointed attorneys are covered in detail by materials available on the District Clerk's and Federal Public Defender's websites.

2. Accordingly, to avoid the need for constant amendment, and also to prevent redundancy, Appendix F has been deleted in its entirety. In lieu of Appendix F, a page should be included in the packet provided to appointed CJA attorneys that will direct attorneys needing assistance to the information contained on the District Clerk's and Federal Public Defender's websites.

APPENDIX "G"

LISTING OF SELECTED GENERAL ORDERS

Set out below is a listing of selected general orders which have been entered by the Court but have not been published in the Local Court Rules for the Western District of Texas. These general orders may be of interest to members of the bar admitted to practice in this Court. Copies will be furnished upon request by the office of the United States District Clerk, San Antonio Division.

ORDER re: AMENDED RULES OF PROBATION

ORDER ASSIGNING THE BUSINESS OF THE COURT

ORDER ADOPTING PLAN FOR EQUAL EMPLOYMENT OPPORTUNITY AND EMPLOYMENT DISPUTE RESOLUTION

PLAN FOR IMPLEMENTATION OF THE CRIMINAL JUSTICE ACT OF 1964, AS AMENDED AND MODIFIED.

APPENDIX "H"

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
_____ DIVISION

_____,	§	
Plaintiff,	§	
	§	
	§	**No._____**
_____,	§	
Defendant.	§	

PROTECTIVE ORDER

Upon motion of all the parties for a Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure,

It is hereby ORDERED that:

1. All Classified Information produced or exchanged in the course of this litigation shall be used solely for the purpose of preparation and trial of this litigation and for no other purpose whatsoever, and shall not be disclosed to any person except in accordance with the terms hereof.

2. "Classified Information," as used herein, means any information of any type, kind or character which is designated a "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") by any of the supplying or receiving parties, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer or otherwise. In designating information as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only"), a party will make such designation only as to that information that it in good faith believes contains confidential information. Information or material which is available to the public, including catalogues, advertising materials, and the like shall not be classified.

3. "Qualified Persons," as used herein means:

(a) Attorneys of record for the parties in this litigation and employees of such attorneys to whom it is necessary that the material be shown for purposes of this litigation;

(b) Actual or potential independent technical experts or consultants, who have been designated in writing by notice to all counsel prior to any disclosure of "Confidential" or "For Counsel Only" (or "Attorneys' Eyes only") information to such

persons, and who have signed a document agreeing to be bound by the terms of this protective order (such signed document to be filed with the Clerk of this Court by the attorney retaining such person);

(c) The party or one party representative (in cases where the party is a legal entity) who shall be designated in writing by the party prior to any disclosure of "Confidential" information to such person and who shall sign a document agreeing to be bound by the terms of this protective order (such signed document to be filed with the Clerk of this Court by the party designating such person); and

(d) If this Court so elects, any other person may be designated as a Qualified Person by order of this Court, after notice and hearing to all parties.

4. Documents produced in this action may be designated by any party or parties as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes only") information by marking each page of the document(s) so designated with a stamp stating " Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only").

In lieu of marking the original of a document, if the original is not produced, the designating party may mark the copies that are produced or exchanged. Originals shall be preserved for inspection.

5. Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a third party (which information pertains to a party) may be designated by any party as "Confidential" or "For Counsel Only" ("or Attorneys' Eyes Only") information by indicating on the record at the deposition that the testimony is "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") and is subject to the provisions of this Order.

Any party may also designate information disclosed at such deposition as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") by notifying all of the parties in writing within thirty (30) days of receipt of the transcript, of the specific pages and lines of the transcript which should be treated as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") thereafter. Each party shall attach a copy of such written notice or notices to the face of the transcript and each copy thereof in his possession, custody or control. All deposition transcripts shall be treated as "For Counsel Only" (or "Attorneys' Eyes Only") for a period of thirty (30) days after the receipt of the transcript.

To the extent possible, the court reporter shall segregate into separate transcripts information designated as "Confidential" o r "For Counsel Only" (or "Attorneys' Eyes Only"), with blank, consecutively numbered pages being provided in a nondesignated main transcript. The separate transcript containing "Confidential" and/ or "For Counsel Only" (or "Attorneys' Eyes Only") information shall have page numbers that correspond to the blank pages in the main transcript.

6. (a) "Confidential" information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons. Information designated as "For Counsel Only" (or "Attorneys' Eyes Only") shall be restricted in circulation to Qualified Persons described in Paragraphs 3(a) and (b) above.

(b) Copies of "For Counsel Only" (or "Attorneys' Eyes Only") information provided to a receiving party shall be maintained in the offices of outside counsel for Plaintiff(s) and Defendant(s). Any documents produced in this litigation, regardless of classification, which are provided to Qualified Persons of Paragraph 3 (b) above, shall be maintained only at the office of such Qualified Person and only working copies shall be made of any such documents. Copies of documents produced under this Protective Order may be made, or exhibits prepared by independent copy services, printers or illustrators for the purpose of this litigation.

(c) Each party's outside counsel shall maintain a log of all copies of "For Counsel Only" (or "Attorneys' Eyes Only") documents which are delivered to any one or more Qualified Person of Paragraph 3 above.

7. Documents previously produced shall be retroactively designated by notice in writing of the designated class of each document by Bates number within thirty (30) days of the entry of this order. Documents unintentionally produced without designation as "Confidential" may be retroactively designated in the same manner and shall be treated appropriately from the date written notice of the designation is provided to the receiving party.

Documents to be inspected shall be treated as "For Counsel Only" (or "Attorneys' Eyes Only") during inspection. At the time of copying for the receiving parties, such inspected documents shall be stamped prominently "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") by the producing party.

8. Nothing herein shall prevent disclosure beyond the terms of this order if each party designating the information as "Confidential" or "For Counsel Only" (or Attorneys' Eyes Only") consents to such disclosure or, if the court, after notice to all affected parties, orders such disclosures. Nor shall anything herein prevent any counsel of record from utilizing "Confidential" or "For Counsel Only" (or "Attorneys' Eyes only") information in the examination or crossexamination of any person who is indicated on the document as being an author, source or recipient of the "Confidential" or "For Counsel Only (or "Attorneys' Eyes Only") information, irrespective of which party produced such information.

9. A party shall not be obligated to challenge the propriety of a designation as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation by the designating party of any information as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only"), or the designation of any person as a Qualified Person, the parties shall first try to resolve such dispute in good faith on an informal basis, such as production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who has designated the document or information as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only"). The designating party shall be required to move the Court for an order preserving the designated status of such information within fourteen (14) days of receipt of the written objection, and failure to do so shall constitute a termination of the restricted status of such item.

The parties may, by stipulation, provide for exceptions to this order and any party may seek an order of this Court modifying this Protective Order.

10. Nothing shall be designated as "For Counsel Only" (or "Attorneys' Eyes Only") information except information of the most sensitive nature, which if disclosed to persons of expertise in the area would reveal significant technical or business advantages of the producing or designating party, and which includes as a major portion subject matter which is believed to be unknown to the opposing party or parties, or any of the employees of the corporate parties. Nothing shall be regarded as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information if it is information that either:

(a) is in the public domain at the time of disclosure, as evidence by a written document;

(b) becomes part of the public domain through no fault of the other party, as evidenced by a written document;

(c) the receiving party can show by written document that the information was in its rightful and lawful possession at the time of disclosure; or

(d) the receiving party lawfully receives such information at a later date from a third party without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

11. In the event a party wishes to use any "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information in any affidavits, briefs, memoranda of law, or other papers filed in Court in this litigation, such "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information used therein shall be filed under seal with the Court.

12. The Clerk of this Court is directed to maintain under seal all documents and transcripts of deposition testimony and answers to interrogatories, admissions and other pleadings filed under seal with the Court in this litigation which have been designated, in whole or in part, as "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information by a party to this action.

13. Unless otherwise agreed to in writing by the parties or ordered by the Court, all proceedings involving or relating to documents or any other information shall be subject to the provisions of this order.

14. Within one hundred twenty (120) days after conclusion of this litigation and any appeal thereof, any document and all reproductions of documents produced by a party, in the possession of any of the persons qualified under Paragraphs 3(a) through (d) shall be returned to the producing party, except as this Court may otherwise order or to the extent such information was used as evidence at the trial. As far as the provisions of any protective orders entered in this action restrict the communication and use of the documents produced thereunder, such orders shall continue to be binding after the conclusion of this litigation, except (a) that there shall be no restriction on documents that are used as exhibits in Court unless such exhibits were filed under seal, and (b) that a party may seek the written permission of the producing party or. order of the Court with respect to dissolution or modification of such protective orders.

15. This order shall not bar any attorney herein in the course of rendering advice to his client with respect to this litigation from conveying to any party client his evaluation in a general way of "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information produced or exchanged herein; provided, however that in rendering such advice and otherwise communicating with his client, the attorney shall not disclose the specific contents of any "Confidential" or "For Counsel Only" (or "Attorneys' Eyes Only") information produced by another party herein, which disclosure would be contrary to the terms of this Protective Order.

16. Any party designating any person as a Qualified Person shall have the duty to reasonably ensure that such person observes the terms of this Protective Order and shall be responsible upon breach of such duty for the failure of any such person to observe the terms of this Protective Order

.

SIGNED AND ENTERED this _____ day of _____, 20___.

_____

UNITED STATES DISTRICT JUDGE

APPENDIX "I"

GUIDELINES FOR NON-STENOGRAPHIC DEPOSITION

Depositions recorded by non-stenographic means, including videotape, are authorized without the prior necessity of a motion and court order if taken under the following guidelines:

1. The beginning of the videotape shall contain an announcement or other indication of the style of the case, the cause number, the name of the court where the case is pending, the physical location of the deposition, and an introduction of the witness, the attorneys, any parties or party representative who may be present, the court reporter, the video technician, and any other persons present at the deposition.

2. The witness will be sworn on camera.

3. The camera shall remain on the witness in standard fashion throughout the deposition. Close-ups and other similar techniques are forbidden unless agreed to by the parties or ordered by the court.

4. The arrangement of the interrogation should be such that, in responding to the interrogating attorney, the witness will look as directly into the camera as possible.

5. No smoking shall be allowed during the videotape, and there should be no unnecessary noise or movement.

6. The party issuing the notice of the videotape deposition shall be responsible for the original of the videotape, and other parties shall have the option to obtain copies at their cost.

7. A time-date generator or other suitable indexing method must be used throughout the course of recording the deposition.

8. An announcement of the time on the videotape shall be made each time the videotape is begun and is stopped.

9. The time of conclusion of the videotape must be announced on the videotape.

APPENDIX "J"

NOTICE REGARDING COMPLAINTS OF JUDICIAL MISCONDUCT OR DISABILITY

To improve the administration of justice in the federal courts, Congress passed the Judicial Conduct and Disability Act of 1980, codified at 28 U.S.C. § 372(c). The law authorizes complaints against United States circuit, district, bankruptcy, and magistrate judges who have "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or who are "unable to discharge all the duties of office by reason of mental or physical disability." The conduct to which the law is addressed does not include making wrong judicial decisions, for the law provides that a complaint may be dismissed if it is "directly related to the merits of a decision or procedural ruling." The Judicial Council of the Fifth Circuit has adopted Rules Governing Complaints of Judicial Misconduct or Disability. These rules apply to judges of the U. S. Court of Appeals for the Fifth Circuit and to the district, bankruptcy, and magistrate judges of federal courts within the Fifth Circuit. The circuit includes the states of Texas, Louisiana, and Mississippi.

These rules may be obtained from, and written complaints filed at, the following office:

Clerk
U. S. Court of Appeals, Fifth Circuit
600 Camp Street, Room 102
New Orleans, Louisiana 70130

APPENDIX "K"

PLAN FOR PROMPT DISPOSITION OF CRIMINAL CASES PURSUANT TO THE SPEEDY TRIAL ACT OF 1974-- 18 U.S.C. §3165(e)(3)

SECTION II

STATEMENT OF TIME LIMITS ADOPTED BY THE COURT AND PROCEDURES FOR IMPLEMENTING THEM

Pursuant to the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. Chapter 208), the Speedy Trial Act Amendments Act of 1979 (Pub. L. No. 96-43, 93 Stat. 327), and the Federal Juvenile Delinquency Act (18 U.S.C. §§5036, 5037), the Judges of the United States District Court for the Western District of Texas have adopted the following time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings:

A. Applicability.

1. Offenses. The time limits set forth herein are applicable to all criminal offenses triable in this Court,[1] including cases triable by United States Magistrates, except for petty offenses as defined in 18 U.S.C. §1(3). Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act. [§3172]

2. Persons. The time limits are applicable to persons accused who have not been indicted or informed against as well as those who have, and the word "defendant" includes such persons unless the context indicates otherwise.

B. Priorities In Scheduling Criminal Cases.

Preference shall be given to criminal proceedings as far as practicable as required by Rule 50(a) of the Federal Rules of Criminal Procedure. The trial of defendants in custody solely because they are awaiting trial and of high-risk defendants as defined in Section E should be given preference over other criminal cases. [§3164(a)]

[1]18 U.S.C. §3172 defines offenses as "any Federal criminal offense which is in violation of any Act of Congress..."

C. Time Within Which An Indictment Or Information Must Be Filed.

(1) Time Limits. If an individual is arrested or served with a summons and the complaint charges an offense to be prosecuted in this district, any indictment or information subsequently filed in connection with such charge shall be filed within 30 days of arrest or service. [§3161(b)]

(2) Grand Jury Not In Session. If the defendant is charged with a felony to be prosecuted in this district, and no grand jury in the district has been in session during the 30-day period prescribed in subsection (1), such period shall be extended an additional 30 days. [§3161(b)]

(3) Measurement Of Time Periods. If a person has not been arrested or served with a summons on a Federal charge, an arrest will be deemed to have been made at such time as the person (i) is held in custody solely for the purpose of responding to a Federal charge; (ii) is delivered to the custody of a Federal official in connection with a Federal charge; or (iii) appears before a judicial officer in connection with a Federal charge.

(4) Related Procedures.

(a) At the time of the earliest appearance before a judicial officer of a person who has been arrested for an offense not charged in an indictment or information, the judicial officer shall establish for the record the date on which the arrest took place.

(b) In the absence of a showing to the contrary, a summons shall be considered to have been served on the date of service shown on the return thereof.

D. Time Within Which Trial Must Commence.

(1) Time Limits. The trial of a defendant shall commence not later than 70 days after the last to occur of the following dates:

(a) The date on which an indictment or information is filed in this district;

(b) The date on which a sealed indictment or information is unsealed; or

(c) The date of the defendant's first appearance before a judicial officer of this district. [3161(c)(1)]

(2) Retrial: Trial After Reinstatement of an Indictment or Information. The retrial of a defendant shall commence within 70 days from the date the order occasioning the retrial becomes final, as shall the trial of a defendant upon an indictment or information dismissed by a trial court and reinstated following an appeal. If the retrial or trial follows an appeal or collateral attack, the court may extend the period if unavailability of witnesses or other factors resulting from passage of time make trial within 70 days impractical. The extended period shall not exceed 180 days. [§§3161(d)(2),(e)]

(3) Withdrawal of Plea. If a defendant enters a plea of guilty or nolo contendere to any or all charges in an indictment or information and is subsequently permitted to withdraw it, the time limit shall be determined for all counts as if the indictment or information were filed on the day the order permitting withdrawal of the plea became final. [§3161(i)]

(4) Superseding Charges. If, after an indictment or information has been filed, a complaint, indictment, or information is filed which charges the defendant with the same offense or with an offense required to be joined with that offense, the time limit applicable to the subsequent charge will be determined as follows:

(a) If the original indictment or information was dismissed on motion of the defendant before the filing of the subsequent charge, the time limit shall be determined without regard to the existence of the original charge. [§3161(d)(1)]

(b) If the original indictment or information is pending at the time the subsequent charge is filed, the trial shall commence within the time limit for commencement of trial on the original indictment or information. [§3161(h)(6)]

(c) If the original indictment or information was dismissed on motion of the United States Attorney before the filing of the subsequent charge, the trial shall commence within the time limit for commencement of trial on the original indictment or information, but the period during which the defendant was not under charges shall be excluded from the computations. Such period is the period between the dismissal of the original indictment or information and the date the time would have commenced to run on the subsequent charge had there been no previous charge.[2] [§3161(h)(6)]

[2]Under the rule of this paragraph, if an indictment was dismissed on motion of the prosecutor on May 1, with 20 days remaining within which trial must be commenced, and the defendant was arrested on a new complaint on June 1, the time remaining for trial would be 20 days from June 1: the time limit would be based on the original indictment, but the period from the dismissal to the new arrest would not count. Although the 30-day arrest-to-indictment time limit would apply to the new arrest as a formal matter, the short deadline for trial would necessitate earlier grand jury action.

If the subsequent charge is contained in a complaint, the formal time limit within which an indictment or information must be obtained on the charge shall be determined without regard to the existence of the original indictment or information, but earlier action may in fact be required if the time limit for commencement of trial is to be satisfied.

(5) Measurement of Time Periods. For the purposes of this section:

(a) If a defendant signs a written consent to be tried before a magistrate and no indictment or information charging the offense has been filed, the time limit shall run from the date of such consent.

(b) In the event of a transfer to this district under Rule 20 of the Federal Rules of Criminal Procedure, the indictment or information shall be deemed filed in this district when the papers in the proceeding or certified copies thereof are received by the clerk.

(c) A trial in a jury case shall be deemed to commence at the beginning of voir dire.

(d) A trial in a nonjury case shall be deemed to commence on the day the case is called, provided that some step in the trial procedure immediately follows.

(6) Related Procedures.

(a) At the time of the defendant's earliest appearance before a judicial officer of this district, the officer will take appropriate steps to assure that the defendant is represented by counsel and shall appoint counsel where appropriate under the Criminal Justice Act and Rule 44 of the Federal Rules of Criminal Procedure.

(b) The court shall have sole responsibility for setting cases for trial after consultation with counsel. At the time of arraignment or as soon thereafter as is practicable, each case will be set for trial on a day certain or listed for trial on a weekly or other short-term calendar. [§3161(a)]

(c) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached during the week of original setting. A conflict in schedules of Assistant United States Attorneys or defense counsel will be ground for a continuance or delayed setting only if approved by the court and called to the court's attention at the earliest practicable time.

(d) In the event that a complaint, indictment, or information is filed against a defendant charged in a pending indictment or information or in an indictment or information dismissed on motion of the United States Attorney, the trial on the new charge shall commence within the time limit for commencement of trial on the original indictment or information unless the court finds that the new charge is not for the same offense charged in the original indictment or information or an offense required to be joined therewith.

(e) At the time of the filing of a complaint, indictment, or information described in paragraph (d), the United States Attorney shall give written notice to the court of that circumstance and of his position with respect to the computation of the time limits.

(f) All pretrial hearings shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the court's criminal docket.

E. Defendants in Custody and High-Risk Defendants.[3]

(1) Time Limits. Notwithstanding any longer time periods that may be permitted under sections C and D, the following time limits will also be applicable to defendants in custody and high-risk defendants as herein defined:

(a) The trial of a defendant held in custody solely for the purpose of trial on a Federal charge shall commence within 90 days following the beginning of continuous custody.

(b) The trial of a high-risk defendant shall commence within 90 days of the designation as high-risk. [§3164(b)]

(2) Definition of "High-Risk Defendant." A high-risk defendant is one reasonably designated by the United States Attorney as posing a danger to himself or any other person or to the community.

(3) Measurement of Time Periods. For the purposes of this section:

(a) A defendant is deemed to be in detention awaiting trial when he is arrested on a Federal charge or otherwise held for the purpose of responding to a Federal charge. Detention is deemed to be solely because the defendant is awaiting trial unless the person exercising custodial authority has an independent basis (not including a detainer) for continuing to hold the defendant.

[3]If a defendant's presence has been obtained through the filing of a detainer with state authorities, the Interstate Agreement on Detainers, 18 U.S.C., Appendix, may require that trial commence before the deadline established by the Speedy Trial Act. See U.S. v. Mauro, 436 U.S. 340), 356-57 n.24 (1978)

(b) If a case is transferred pursuant to Rule 20 of the Federal Rules of Criminal Procedure and the defendant subsequently rejects disposition under Rule 20 or the court declines to accept the plea, a new period of continuous detention awaiting trial will begin at that time.

(c) A trial shall be deemed to commence as provided in section D(5)(c) and D(5)(d).

(4) Related Procedures.

(a) If a defendant is being held in custody solely for the purpose of awaiting trial, the United States Attorney shall advise the court at the earliest practicable time of the date of the beginning of such custody.

(b) The United States Attorney shall advise the court at the earliest practicable time (usually at the hearing with respect to bail) if the defendant is considered by him to be high risk.

(c) If the court finds that the filing of a "high-risk" designation as a public record may result in prejudice to the defendant, it may order the designation sealed for such period as is necessary to protect the defendant's right to a fair trial, but not beyond the time that the court's judgment in the case become final. During the time the designation is under seal, it shall be made known to the defendant and his counsel but shall not be made known to other persons without the permission of the court.

F. Exclusion of Time From Computations.

(1) Applicability. In computing any time limit under section C (Interval I), D (Interval II), or E (Custody/High-Risk), the periods of delay set forth in 18 U.S.C. §3161(h) shall be excluded. Such periods of delay shall not be excluded in computing the minimum period for commencement of trial under section G.

(2) Records of Excludable Time. The clerk of the court shall enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, information with respect to excludable periods of time for each criminal defendant.

(3) Stipulations.

(a) The attorney for the government and the attorney for the defendant may at any time enter into stipulations with respect to the accuracy of the docket entries recording excludable time.

(b) To the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket for any excludable period of delay, the stipulation shall be conclusive as between the parties unless it has no basis in fact or law. It shall similarly be conclusive as to a codefendant for the limited purpose of determining, under 18 U.S.C. §3161(h)(7), whether time has run against the defendant entering into the stipulation.

(c) To the extent that the amount of time stipulated exceeds the amount recorded on the docket, the stipulation shall have no effect unless approved by the court.

(4) Pre-Indictment Procedures.

(a) In the event that the United States Attorney anticipates that an indictment or information will not be filed within the time limit set forth in section C (Interval I), he may file a written motion with the court for a determination of excludable time. In the event that the United States Attorney seeks a continuance under 18 U.S.C. §3161(h)(8), he shall file a written motion with the court requesting such a continuance.

(b) The motion of the United States Attorney shall state (i) the period of time proposed for exclusion, and (ii) the basis of the proposed exclusion. If the motion is for a continuance under 18 U.S.C. §3161(h)(8), it shall also state whether or not the defendant is being held in custody on the basis of the complaint. In appropriate circumstances, the motion may include a request that some or all of the supporting material be considered ex parte and in camera.

(c) The court may grant a continuance under 18 U.S.C. §3161(h)(8) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government. If the continuance is to a date not certain, the court shall require one or both parties to inform the court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The court shall determine the frequency of such reports in the light of the facts of the particular case.

(5) Post-Indictment Procedures.

(a) At each appearance of counsel before the court, counsel shall examine the clerk's records of excludable time for completeness and accuracy and shall bring to the court's immediate attention any claim that the clerk's record is in any way incorrect.

(b) In the event that the court continues a trial beyond the time limit set forth in section D or E, the court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C. §3161(h).

(c) If it is determined that a continuance is justified, the court shall set forth its findings in the record, either orally or in writing. If the continuance is granted under 18 U.S.C. §3161(h)(8), the court shall also set forth its reasons for finding that the ends of justice served by granting the continuance outweigh the best interest of the public and the defendant in a speedy trial. If the continuance is to a date not certain, the court shall require one or both parties to inform the court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The court shall determine the frequency of such reports in the light of the facts of the particular case.

G. Minimum Period for Defense Preparation.

Unless the defendant consents in writing to the contrary, the trial shall not commence earlier than 30 days from (i) the date on which the indictment or information is filed or (ii), if later, from the date on which counsel first enters an appearance, or (iii) the date on which the defendant expressly waives counsel and elects to proceed pro se. In circumstances in which the 70-day time limit for commencing trial on a charge in an indictment or information is determined by reference to an earlier indictment or information pursuant to section D(4), the 30-day minimum period shall also be determined by reference to the earlier indictment or information. When prosecution is resumed on an original indictment or information following a mistrial, appeal, or withdrawal of a guilty plea, a new 30-day minimum period will not begin to run. The court will in all cases schedule trials so as to permit defense counsel adequate preparation time in the light of all the circumstances. [§3161(c)(2)].

H. Time Within Which Defendant Should be Sentenced.

(1) Time Limit. A defendant shall ordinarily be sentenced within (45) days of the date of his conviction or plea of guilty or nolo contendere.

(2) Related Procedures. If the defendant and his counsel consent thereto, a presentence investigation may be commenced prior to a plea of guilty or nolo contendere or a conviction.

I. Juvenile Proceedings.

(1) Time Within Which Trial Must Commence. An alleged delinquent who is in detention pending trial shall be brought to trial within 30 days of the date on which such detention was begun, as provided in 18 U.S.C. §5036.

(2) Time of Dispositional Hearing. If a juvenile is adjudicated delinquent, a separate dispositional hearing shall be held no later than 20 court days after trial, unless the court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(c).

J. Sanctions.

(1) Dismissal or Release from Custody. Failure to comply with the requirements of Title I of the Speedy Trial Act may entitle the defendant to dismissal of the charges against him or to release from pretrial custody. Nothing in this plan shall be construed to require that a case be dismissed or a defendant released from custody in circumstances in which such action would not be required by 18 U.S.C. §§ 3162 and 3164.[4]

[4]Dismissal may also be required in some cases under the Interstate Agreement on Detainers, 18 U.S.C., Appendix.

(2) **High-Risk Defendant.** A high-risk defendant whose trial has not commenced within the time limit set forth in 18 U.S.C. § 3164(b) shall, if the failure to commence trial was through no fault of the attorney for the government, have his release conditions automatically reviewed. A high-risk defendant who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under Chapter 207 of Title 18, U.S.C., to ensure that he shall appear at trial as required. [§3164(c)]

(3) **Discipline of Attorneys.** In a case in which counsel (a) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial, (b) files a motion solely for the purpose of delay which he knows is frivolous and without merit, (c) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of the continuance, or (d) otherwise willfully fails to proceed to trial without justification consistent with 18 U.S.C. §3161, the court may punish such counsel as provided in 18 U.S.C. §§ 3162(b) and (c).

(4) **Alleged Juvenile Delinquents.** An alleged delinquent in custody whose trial has not commenced within the time limit set forth in 18 U.S.C. § 5036 shall be entitled to dismissal of his case pursuant to that section unless the Attorney General shows that the delay was consented to or caused by the juvenile or his counsel, or would be in the interest of justice in the particular case.

K. Persons Serving Terms of Imprisonment.

If the United States Attorney knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly seek to obtain the presence of the prisoner for trial, or cause a detainer to be filed, in accordance with the provisions of 18 U.S.C. §3161(j).

L. Effective Dates.

(1) The amendments to the Speedy Trial Act made by Public Law 96-43 became effective August 2, 1979. To the extent that this revision of the district's plan does more than merely reflect the amendments, the revised plan shall take effect upon approval of the reviewing panel designated in accordance with 18 U.S.C. §3165(c). However, the dismissal sanction and the sanctions against attorneys authorized by 18 U.S.C. § 3162 and reflected in sanctions J(1) and (2) of this plan shall apply only to defendants whose cases are commenced by arrest or summons on or after July, 1980, and to indictments and information filed on or after that date.

(2) If a defendant was arrested or served with a summons before July 1, 1979, the time within which an information or indictment must be filed shall be determined under the plan that was in effect at the time of such arrest or service.

(3) If a defendant was arraigned before August 2, 1979, the time within which the trial must commence shall be determined under the plan that was in effect at the time of such arraignment.

(4) If a defendant was in custody on August 2, 1979, solely because he was awaiting trial, the 90-day period under section E shall be computed from that date.

APPENDIX "L"

Local Court Rules of the United States Bankruptcy Court for the Western District of Texas

(Available by contacting the U. S. Bankruptcy Court)

www.txwb.uscourts.gov

APPENDIX "M"

ADOPTION OF THE TEXAS LAWYER'S CREED

On November 7, 1989, the Texas Supreme Court and the Texas Court of Criminal Appeals adopted the Texas Lawyer's Creed to encourage honorable conduct among Texas lawyers and to discourage abusive litigation tactics. A copy of the Creed is attached. The four Chief Judges of the federal districts in Texas signed the attached proclamation on November 9, 1994, commending the Creed to lawyers practicing in Texas federal courts. In light of the wide acceptance of the Texas Lawyer's Creed, United States District Judges of the Western District of Texas hereby adopt the Creed and commend it for observance to all lawyers practicing in this District. It should be understood that the Creed is aspirational and that any failure to follow it cannot be the basis for any sanction or other remedy.

DATED this 30th day of January, 1995.

HARRY LEE HUDSPETH, Chief Judge
Western District of Texas

PROCLAMATION
OF
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN, NORTHERN, SOUTHERN AND WESTERN DISTRICTS OF TEXAS

WHEREAS, on November 7, 1989, the Supreme Court of Texas and the Texas Court of Criminal Appeals adopted "The Texas Lawyer's Creed--A Mandate for Professionalism"; and

WHEREAS, the purpose of the Creed is to eliminate abusive litigation tactics which are a disservice to our citizens, harmful to clients, and demeaning to our profession; and

WHEREAS, the Texas Lawyer's Creed has aspirational standards and encourages attorneys to adhere to the highest principles of professionalism in their dealings with the legal system, clients, judges and other lawyers; and

WHEREAS, many lawyers and courts across the state have embraced the Texas Lawyer's Creed and adopted its tenets for conducting themselves with integrity, civility and courtesy; and

WHEREAS, most attorneys practicing in the Texas federal courts are Texas attorneys subject to the recommendations of the Texas Lawyer's Creed;

THEREFORE, Be It Resolved that United States District Courts for the Eastern, Northern, Southern, and Western Districts of Texas commend to attorneys practicing in these Districts a thorough study of The Texas Lawyer's Creed; and

Be It Further Resolved, as stated in the Creed, that all attorneys of the Eastern, Northern, Southern, and Western Districts rededicate themselves to practice law so that they can enhance public confidence in the legal profession, faithfully serve their clients, and fulfill their responsibility to the legal system.

APPROVED this 9th day of November, 1994.

Richard A. Schell

RICHARD A. SCHELL, Chief Judge
United States District Court for the
Eastern District of Texas

BAREFOOT SANDERS, Chief Judge
United States District Court for the
Northern District of Texas

NORMAN W. BLACK, Chief Judge
United States District Court for the
Southern District of Texas

HARRY LEE HUDSPETH, Chief Judge
United States District Court for the
Western District of Texas

ASPIRATIONAL GOALS: THE TEXAS LAWYER'S CREED – A MANDATE FOR PROFESSIONALISM ADOPTED BY THE SUPREME COURT OF TEXAS AND THE COURT OF CRIMINAL APPEALS NOVEMBER 7, 1989

I am a lawyer; I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that Professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason than it is right.

I. OUR LEGAL SYSTEM

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this Creed when undertaking representation.
2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.
3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.
5. I will advise my client of proper and expected behavior.
6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.
7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.
8. I will advise my client that we will not pursue tactics which are intended primarily for delay.
9. I will advise my client that we will not pursue any course of action which is without merit.
10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.
11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.
3. I will identify for other counsel or parties all changes I have made in documents submitted for review.

4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.

5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are cancelled.

6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.

7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.

8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.

9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.

10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.

11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.

12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.

13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.

14. I will not arbitrarily schedule a deposition, Court appearance, or hearing until a good faith effort has been made to schedule it by agreement.

15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

16. I will refrain from excessive and abusive discovery.

17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.

18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.

19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.

2. I will conduct myself in court in a professional manner and demonstrate my respect for the Court and the law.

3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.

4. I will be punctual.

5. I will not engage in any conduct which offends the dignity and decorum of proceedings.

6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.

7. I will respect the rulings of the Court.

8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.

9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

121 F.R.D. 284
57 USLW 2058, 2 Tex.Bankr.Ct.Rep. 518
(Cite as: 121 F.R.D. 284)

United States District Court,
N.D. Texas,
Dallas Division.

DONDI PROPERTIES CORPORATION and the Federal Savings and Loan Insurance Corporation as Receiver for Vernon Savings and Loan Association, FSA,
Plaintiffs,
v.
COMMERCE SAVINGS AND LOAN ASSOCIATION, et al., Defendants.
Jean Rinard KNIGHT, Plaintiff,
v.
PROTECTIVE LIFE INSURANCE COMPANY, Defendant.

Civ. A. Nos. CA3-87-1725-H, CA3-87-2692-D.

July 14, 1988.

At request of one its members, the United States District Court for the Northern District of Texas convened en banc for purpose of establishing standards of litigation conduct to be observed in civil actions in district. The District Court held that standards of litigation conduct would be adopted.

Ordered accordingly.

West Headnotes

[1] **Federal Civil Procedure** **25**
170Ak25 Most Cited Cases

Standards of litigation conduct to be observed in civil actions litigated in Northern District of Texas would be adopted. 28 U.S.C.A. § 2072.

[2] **Federal Civil Procedure** **1636.1**
170Ak1636.1 Most Cited Cases
(Formerly 170Ak1636)

Plaintiffs' failure to comply with magistrate's previous discovery orders did not require dismissal of civil action presenting complex legal and factual theories involving hundreds of thousands of documents, absent showing of intentional or willful conduct on part of plaintiffs or their counsel. Fed.Rules Civ.Proc.Rule 37(b), 28 U.S.C.A.

[3] **Federal Civil Procedure** **2795**
170Ak2795 Most Cited Cases
(Formerly 45k24)

Attorney's failure to identify himself or his client to prospective witness prior to making inquiries about transaction pertinent to client's civil action did not require sanctions. U.S.Dist.Ct.Rules N.D.Tex., Rule 5.1(a).

[4] **Federal Civil Procedure** **1105.1**
170Ak1105.1 Most Cited Cases
(Formerly 170Ak1105)

Filing reply brief without district court's permission did not require that brief be stricken, where court had not yet considered underlying substantive motions. U.S.Dist.Ct.Rules N.D.Tex., Rules 5.1, 5.1(a, c-f).

***284** Don T. O'Bannon of Arter, Hadden & Witts, Dallas, Tex., and Jerome A. Hochberg and Douglas M. Mangel of Arter & ***285** Hadden, Washington, D.C., for Dondi Properties Corp., et al.

Ernest E. Figari, Alan S. Loewinsohn, and James A. Jones of Figari & Davenport, Dallas, Tex., for Gerald Stool, et al.

Gordon M. Shapiro, Michael L. Knapek, and Patricia J. Kendall of Jackson & Walker, Dallas, Tex., for Commerce Sav. Assn.

Paul E. Coggins and Weston C. Loegering of Davis, Meadows, Owens, Collier & Zachry, Dallas, Tex., for W. Deryl Comer.

Randall L. Freedman, Dallas, Tex., for Jack Franks.

Christopher M. Weil and Amy Brook Ganci of Weil & Renneker, P.C., Dallas, Tex., for R.H. Westmoreland.

Mark T. Davenport of Figari & Davenport, Dallas, Tex., for Jean Rinard Knight.

David M. Kendall of Thompson & Knight, Austin, Tex., for Protective Life Ins. Co.

Before PORTER, Chief Judge, SANDERS, Acting

Chief Judge, and WOODWARD, MAHON, BELEW, ROBINSON, BUCHMEYER, FISH, MALONEY, FITZWATER, and CUMMINGS, District Judges.

PER CURIAM:

We sit en banc to adopt standards of litigation conduct for attorneys appearing in civil actions in the Northern District of Texas.

I.

Dondi Properties is a suit for recovery based upon civil RICO, common law and statutory fraud, the Texas Fraudulent Transfer Act, federal regulations prohibiting affiliate transactions, civil conspiracy, negligent misrepresentation, and usury, arising in connection with activities related to the failed Vernon Savings and Loan Association. *Knight* is an action for violations of the Texas Insurance Code and Texas Deceptive Trade Practices-- Consumer Protection Act, and for breach of duty of good faith and breach of contract, arising from defendant's refusal to pay plaintiff the proceeds of a life insurance policy.

In *Dondi Properties,* the following motions have been referred to the magistrate pursuant to 28 U.S.C. § 636(b) and N.D.Tex.Misc.Order No. 6, Rule 2(c): the Stool defendants' [FN1] third motion for sanctions or, in the alternative, to compel (and supplement to the motion); the third motion for sanctions of defendant, Commerce Savings Association (and supplement to the motion); defendant, W. Deryl Comer's, first motion for sanctions or, in the alternative, motion to compel (and supplement to the motion); the Stool defendants' motion for sanctions against plaintiffs' attorney; defendant, Jack Franks', first motion for sanctions or, in the alternative, motion to compel; defendant, R.H. Westmoreland's, motion for sanctions and, in the alternative, to compel; and various submissions containing additional authorities in support of the motions and briefs already filed. Plaintiffs have responded to the motions, and the Stool defendants have filed a motion for leave to file reply to plaintiffs' response.

FN1. The Stool defendants are Gerald Stool, Donald F. Goldman, AMF Partnership, Ltd., Park Cosmopolitan Associates, Duck Hook Associates, Turnpike Waldrop Joint Venture, Alamo Associates, and Seven Flags Partnership.

The sanction motions complain of plaintiffs' failure to answer interrogatories, failure to comply with prior orders of the court pertaining to discovery, misrepresenting facts to the court, and improperly withholding documents. The magistrate had previously entered orders on March 29, 1988 and April 28, 1988 and defendants contend plaintiffs' conduct with respect to prior orders of the magistrate warrants dismissing their action or awarding other relief to movants.

In *Knight,* there is pending before a judge of this court plaintiff's motion to strike a reply brief that defendant filed without leave of court. On April 8, 1988, defendant filed four motions, including motions for separate trials and to join another ***286** party. [FN2] On April 27, 1988, plaintiff filed her response to the motions. Thereafter, without leave of court, defendant, on May 26, 1988, filed a reply to plaintiff's response. On June 3, 1988, plaintiff filed a motion to strike the reply, to which motion defendant has filed a response.

FN2. The other motions are motions to compel and for protective order.

Plaintiff contends the reply brief should be stricken because defendant did not, as required by Local Rule 5.1(f), obtain leave to file a reply, because defendant failed to seek permission immediately upon receipt of plaintiff's response, and, alternatively, because defendant's reply was filed in excess of 20 days after plaintiff filed her response. In the event the court does not strike the reply, plaintiff requests leave to file an additional response.

At the request of a member of the court, we convened the en banc court [FN3] for the purpose of establishing standards of litigation conduct to be observed in civil actions litigated in the Northern District of Texas. In section II of the opinion we establish such standards. In section III the magistrate decides the *Dondi Properties* motions, and in section IV a judge of the court decides the *Knight* motion, in accordance with the standards we adopt. [FN4]

FN3. We concede the unusual nature of this procedure. We note, however, that the U.S. District Court for the Central District of California recently sat en banc to decide the

constitutionality of the sentencing guidelines promulgated pursuant to the Sentencing Reform Act of 1984. See United States v. Ortega Lopez, 684 F.Supp. 1506 (C.D.Cal.1988) (en banc).

FN4. While we adopt en banc the standards for civil litigation conduct, the decisions regarding the particular motions are those of the magistrate and district judge, respectively, before whom the motions are pending.

II.

[1] The judicial branch of the United States government is charged with responsibility for deciding cases and controversies and for administering justice. We attempt to carry out our responsibilities in the most prompt and efficient manner, recognizing that justice delayed, and justice obtained at excessive cost, is often justice denied. [FN5]

FN5. We do so in the spirit of Fed.R.Civ.P. 1, which provides that the federal rules "shall be construed to secure the just, speedy, and inexpensive determination of every action."

We address today a problem that, though of relatively recent origin, is so pernicious that it threatens to delay the administration of justice and to place litigation beyond the financial reach of litigants. With alarming frequency, we find that valuable judicial and attorney time is consumed in resolving unnecessary contention and sharp practices between lawyers. Judges and magistrates of this court are required to devote substantial attention to refereeing abusive litigation tactics that range from benign incivility to outright obstruction. Our system of justice can ill-afford to devote scarce resources to supervising matters that do not advance the resolution of the merits of a case; nor can justice long remain available to deserving litigants if the costs of litigation are fueled unnecessarily to the point of being prohibitive.

As judges and former practitioners from varied backgrounds and levels of experience, we judicially know that litigation is conducted today in a manner far different from years past. Whether the increased size of the bar has decreased collegiality, or the legal profession has become only a business, or experienced lawyers have ceased to teach new lawyers the standards to be observed, or because of other factors not readily categorized, we observe patterns of behavior that forebode ill for our system of justice. [FN6] We now adopt standards designed to end such conduct.

FN6. Nor are we alone in our observations. In December 1984 the Texas Bar Foundation conducted a "Conference on Professionalism." The conference summary, issued in March 1985, recounts similar observations from leading judges, lawyers, and legal educators concerning the subject of lawyer professionalism.

A.

We begin by recognizing our power to adopt standards for attorney conduct in ***287** civil actions and by determining, as a matter of prudence, that we, rather than the circuit court, should adopt such standards in the first instance.

By means of the Rules Enabling Act of 1934, now codified as 28 U.S.C. § 2072, Congress has authorized the Supreme Court to adopt rules of civil procedure. The Court has promulgated rules that empower district courts to manage all aspects of a civil action, including pretrial scheduling and planning (Rule 16) and discovery (Rule 26(f)). We are authorized to protect attorneys and litigants from practices that may increase their expenses and burdens (Rules 26(b)(1) and 26(c)) or may cause them annoyance, embarrassment, or oppression (Rule 26(c)), and to impose sanctions upon parties or attorneys who violate the rules and orders of the court (Rules 16(f) and 37). We likewise have the power by statute to tax costs, expenses, and attorney's fees to attorneys who unreasonably and vexatiously multiply the proceedings in any case. 28 U.S.C. § 1927. We are also granted the authority to punish, as contempt of court, the misbehavior of court officers. 18 U.S.C. § 401. In addition to the authority granted us by statute or by rule, we possess the inherent power to regulate the administration of justice. See Batson v. Neal Spelce Associates, Inc., 805 F.2d 546, 550 (5th Cir.1986) (federal courts possess inherent power to assess attorney's fees and litigation costs when losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons); Thomas v. Capital Security Services, Inc., 836 F.2d 866, 875

(5th Cir.1988) (en banc) (district court has inherent power to award attorney's fees when losing party has acted in bad faith in actions that led to the lawsuit or to the conduct of the litigation).

We conclude also that, as a matter of prudence, this court should adopt standards of conduct without awaiting action of the circuit court. We find support for this approach in *Thomas,* where, in the Rule 11 context, the Fifth Circuit noted the singular perspective of the district court in deciding the fact intensive inquiry whether to impose or deny sanctions. The court noted that trial judges are "in the best position to review the factual circumstances and render an informed judgment as [they are] intimately involved with the case, the litigants, and the attorneys on a daily basis." 836 F.2d at 873. We think the circuit court's rationale for eschewing "second-hand review of the facts" in Rule 11 cases may be applied to our adopting standards of litigation conduct: " 'the district court will have a better grasp of what is acceptable trial-level practice among litigating members of the bar than will appellate judges.' ". Id. at 873 (quoting Eastway Construction Corp. v. City of New York, 637 F.Supp. 558, 566 (E.D.N.Y.1986)).

B.

We next set out the standards to which we expect litigation counsel to adhere.

The Dallas Bar Association recently adopted "Guidelines of Professional Courtesy" and a "Lawyer's Creed" [FN7] that are both sensible and pertinent to the problems we address here. From them we adopt the following as standards of practice [FN8] to be observed by attorneys appearing in civil actions in this district:

> FN7. We set out in an appendix pertinent portions of the guidelines and the creed in the form adopted by the Dallas Bar Association.

> FN8. We also commend to counsel the American College of Trial Lawyers' Code of Trial Conduct (rev. 1987). Those portions of the Code that are applicable to our decision today are set out in the appendix.

(A) In fulfilling his or her primary duty to the client, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.
(B) A lawyer owes, to the judiciary, candor, diligence and utmost respect.
(C) A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.
(D) A lawyer unquestionably owes, to the administration of justice, the fundamental ***288** duties of personal dignity and professional integrity.
(E) Lawyers should treat each other, the opposing party, the court, and members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.
(F) A client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.
(G) In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.
(H) A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or counsel's client.
(I) Lawyers will be punctual in communications with others and in honoring scheduled appearances, and will recognize that neglect and tardiness are demeaning to the lawyer and to the judicial system.
(J) If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent.
(K) Effective advocacy does not require antagonistic or obnoxious behavior and members of the Bar will adhere to the higher standard of conduct which judges, lawyers, clients, and the public may rightfully expect.

Attorneys who abide faithfully by the standards we adopt should have little difficulty conducting themselves as members of a learned profession whose unswerving duty is to the public they serve and to the system of justice in which they practice. [FN9] Those litigators who persist in viewing themselves solely as combatants, or who perceive that they are retained to win at all costs without regard to fundamental principles of justice, will find that their conduct does not square with the practices we expect of them. Malfeasant counsel can expect instead that their conduct will prompt an appropriate response from the court, including the

range of sanctions the Fifth Circuit suggests in the Rule 11 context: "a warm friendly discussion on the record, a hard-nosed reprimand in open court, compulsory legal education, monetary sanctions, or other measures appropriate to the circumstances." Thomas, 836 F.2d at 878. [FN10]

FN9. We note that these standards are consistent with both the American Bar Association and State Bar of Texas Codes of Professional Responsibility. *See, e.g.,* ethical considerations EC 7-10, EC 7-36, EC 7- 37, and EC 7-38 set out in the appendix.

FN10. We draw the parallel to Fed.R.Civ.P. 11 with the *caveat* that we are not adopting Rule 11 jurisprudence in the context presented here.

We do not, by adopting these standards, invite satellite litigation of the kind we now see in the context of Fed.R.Civ.P. 11 motions. To do so would defeat the fundamental premise which motivates our action. We do intend, however, to take the steps necessary to ensure that justice is not removed from the reach of litigants either because improper litigation tactics interpose unnecessary delay or because such actions increase the cost of litigation beyond the litigant's financial grasp. [FN11]

FN11. We note, by way of example, the Dallas Bar Association guideline that eliminates the necessity for motions, briefs, hearings, orders, and other formalities when "opposing counsel makes a reasonable request which does not prejudice the rights of the client." This salutary standard recognizes that every contested motion, however simple, costs litigants and the court time and money. Yet our court has experienced an increasing number of instances in which attorneys refuse to agree to an extension of time in which to answer or to respond to a dispositive motion, or even to consent to the filing of an amended pleading, notwithstanding that the extension of time or the amended pleading would delay neither the disposition of a pending matter nor the trial of the case.

Similarly, we do not imply by prescribing these standards that counsel are excused from conducting themselves in any manner otherwise required by law or by court rule. We think the standards we now adopt are a ***289** necessary corollary to existing law, and are appropriately established to signal our strong disapproval of practices that have no place in our system of justice and to emphasize that a lawyer's conduct, both with respect to the court and to other lawyers, should at all times be characterized by honesty and fair play.

III.

The *Dondi Properties* motions referred to the magistrate for determination raise issues concerning plaintiffs' compliance with prior discovery orders of the court and the conduct of one of plaintiffs' attorneys in contacting a possible witness.

A.
Discovery Issues

[2] Although in excess of 20 pleadings and letters from counsel have been presented to the court involving various defendants' motions for sanctions, the common denominator of all is whether or not plaintiffs have complied with the previous discovery orders of the magistrate.

The case at hand presents complex legal and factual theories involving hundreds of thousands of documents. The logistical problems presented in discovery are compounded by several factors, among them being that (a) none of the Receiver (FSLIC)'s employees were employed by either Vernon Savings and Loan Association, FSA, or its predecessor; (b) prior to the Receiver's receipt of documents they were not kept in a complete and orderly manner; (c) that plaintiffs have had three sets of attorneys of record in this case; and (d) plaintiffs and their counsel, past and present, have not taken adequate measures to assure compliance with the court's prior orders.

In seeking dismissal of plaintiffs' case, the moving defendants have categorized plaintiffs' conduct and that of their counsel as being in "bad faith" and "in defiance" of the court's prior orders. Such characterization of a party opponent's conduct should be sparingly employed by counsel and should be reserved for only those instances in which there is a sound basis in fact demonstrating a party's deliberate and intentional disregard of an order of the court or of obligations imposed under applicable Federal Rules of Civil Procedure. Such allegations, when inappropriately made, add much heat but little light to the court's task of deciding discovery disputes.

Although there are conceded instances of neglect on the part of plaintiffs and their counsel and instances of lack of communication or miscommunication among counsel for the parties in the present discovery disputes, there is no showing of intentional or willful conduct on the part of plaintiffs or their counsel which warrants dismissal under Rule 37(b), Federal Rules of Civil Procedure. However, the disputes which exist amply demonstrate an inadequate utilization of Local Rule 5.1(a). [FN12]

FN12. In part Local Rule 5.1(a) reads as follows: "Before filing a motion, counsel for a moving party shall confer with the counsel of all parties affected by the requested relief to determine whether or not the contemplated motion will be opposed."

Local Rule 5.1(a) implicitly recognizes that in general the rules dealing with discovery in federal cases are to be self-executing. The purpose of the conference requirement is to promote a frank exchange between counsel to resolve issues by agreement or to at least narrow and focus the matters in controversy before judicial resolution is sought. Regrettably over the years, in many instances the conference requirement seems to have evolved into a *pro forma* matter. With increased frequency I observe instances in which discovery disputes are resolved by the affected parties after a hearing has been set-- sometimes within minutes before the hearing is to commence. If disputes can be resolved after motions have been filed, it follows that in all but the most extraordinary circumstances, they could have been resolved in the course of Rule 5.1(a) conferences.

A conference requires the participation of counsel for all affected parties. An attorney's refusal to return a call requesting a Rule 5.1(a) conference will not be ***290** tolerated. Of course, the conference requirement may be satisfied by a written communication as well. The manner in which the conference is held and the length of the conference will be dictated by the complexity of the issues and the sound judgment of attorneys in their capacities as advocates as well as officers of the court, with the objective of maximizing the resolution of disputes without court intervention. Properly utilized Rule 5.1(a) promotes judicial economy while at the same time reducing litigants' expenses incurred for attorneys' time in briefing issues and in preparing and presenting pleadings. [FN13]

FN13. When Rule 5.1(a) conferences result in agreements, counsel may wish to memorialize such agreements in writing.

Because the present controversies may well be resolved, or appreciably narrowed, following further communications among counsel and because the court is not presented with circumstances which warrant dismissal under Rule 37, the movant defendants' motions will be denied at this time.

B.
Motion for Sanctions

[3] In their motion filed on May 18, 1988, defendants, Goldman, Stool, AMF Partnership Ltd., et al. (the Stool defendants) seek an order sanctioning the conduct of David Hammond, an attorney practicing with the firm which is counsel of record for plaintiffs.

The undisputed facts are that on or about May 9, 1988, plaintiffs' attorney had a telephone conversation with Carl Edwards in which the attorney made inquiries about transactions pertinent to the present case, but the attorney did not identify himself as an attorney representing the plaintiffs.

As stated in the opinion issued in Ceramco, Inc. v. Lee Pharmaceuticals, 510 F.2d 268, 271 (2d Cir.1975): "the courts have not only the supervisory power but also the duty and responsibility to disqualify counsel for unethical conduct *prejudicial to his adversaries*." (Emphasis added). However, in the present case movants do not seek to disqualify plaintiffs' counsel nor have they shown any prejudice resulting from the communication. Except in those instances in which an attorney's conduct prejudicially affects the interests of a party opponent or impairs the administration of justice, adjudication of alleged ethical violations is more appropriately left to grievance committees constituted for such purpose. Deferring to such bodies permits proper resolution of attorneys' conduct while at the same time relieving courts of deciding matters which are unrelated or at most peripheral to the cases before them. As reflected in the pleadings pertinent to this motion, there are both legal issues and factual conflicts which must be resolved in deciding whether ethical standards were violated. Indeed, following the filing of the motion movants have sought to depose the attorney whose conduct is at issue, which has in turn precipitated a motion for protective order filed by the plaintiffs.

Insuring that members of the legal profession comply with ethical standards should be a matter of concern to all attorneys, and alleged breaches should be brought to the attention of the grievance committee by an attorney without charge to a client, which is appropriate only when resolution by a court is warranted. *Ceramco, Inc., supra.* By the same token, absent a motion to disqualify, which if granted would adversely affect his client's interests, an attorney whose conduct is called into question must himself bear the cost of defending his actions before a grievance committee.

For the foregoing reasons movants' motion for sanctions will be denied, but without prejudice to their counsel's right to present the allegations of misconduct to the grievance committee. The refusal to grant sanctions should not be understood as condoning an attorney's failure to identify himself and his client to a prospective witness. Had the attorney done so in the present case, the present issue may not ***291** have arisen. An attorney is held to a higher standard of conduct than non-lawyers, and unlike non-lawyers, if rebuffed by a prospective witness, the attorney may use available discovery procedures to obtain the information sought.

It is, therefore, ordered that the defendants' motions relating to discovery are denied, but without prejudice to their right to file subsequent motions, if disputes remain after their counsel and plaintiffs' counsel have engaged in a Rule 5.1(a) conference consistent with this order.

It is further ordered that the Stool defendants' motion for sanctions against plaintiffs' attorney is denied, but without prejudice to presentation of the issues raised to the appropriate grievance committee.

It is further ordered that neither the Stool defendants' counsel nor the plaintiffs' attorneys will charge their clients for any time or expenses incurred relating in any manner to the Stool defendants' motion for sanctions against plaintiffs' attorney.

IV.

[4] In *Knight,* plaintiff moves to strike a reply brief that defendant filed without the court's permission. In the alternative, plaintiff seeks leave to file a response to the reply brief.

A.

It is undisputed that defendant did not obtain court permission to reply to plaintiff's response to defendant's motions for separate trials and to join a party. Defendant explains in its response to the motion to strike that "because of the flurry of activity in this case, it failed to secure permission from the Presiding Judge to file the reply." Although defendant clearly violated a Local Rule of this court, the court concludes that the error did not warrant plaintiff's filing a motion to strike.

The en banc court has adopted standards of civil litigation conduct that apply to attorneys who practice before this court. One standard requires that attorneys cooperate with one another in order to promote "the efficient administration of our system of justice." This and the other standards adopted by the court attempt to satisfy the goals of reducing litigation costs and expediting the resolution of civil actions. The attorneys in *Knight* did not cooperate in connection with the filing of the reply brief, and there resulted a dispute that has presumably increased counsel's fees to their clients, has unquestionably required of the court an unnecessary expenditure of time, and has not materially advanced the resolution of the merits of this case.

In Local Rule 5.1 we have established the briefing and decisional regimens for contested motions. Rules 5.1(a), (c), and (d) prescribe the movant's obligations. Rule 5.1(e) dictates the deadline for filing a response and provides when contested motions shall be deemed ready for disposition. A movant may not, as of right, file a reply to a response; instead, Rule 5.1(f) requires the movant to obtain permission to do so immediately upon receipt of a response. In the present case, defendant's counsel failed to cooperate with plaintiff's counsel because he did not ask him to agree [FN14] to the filing of a reply. Plaintiff's counsel failed to cooperate when he filed the motion to strike the reply. [FN15]

FN14. The court is not to be understood as holding that the parties can, by agreement, bind the presiding judge to grant permission to file a reply. Where the parties have so agreed, however, the court will usually grant such permission.

FN15. Plaintiff's motion to strike contains a certificate of conference that states that defendant and plaintiff could not agree regarding the motion to strike. Defendant disputes in its response that plaintiff and defendant had such a conference, but states that had there been one, defendant would

have opposed the motion to strike.

While our court has decided that the determination whether to permit a reply is discretionary with each judge, the principle is well-established that the party with the burden on a particular matter will normally be permitted to open and close the briefing. *See, e.g.,* Sup.Ct.R. 35(3); Fed.R.App.P. 28(c). It should thus be rare that a party ***292** who opposes a motion will object to the movant's filing a reply.

In the present case, the parties have presumably incurred the expense of preparing, and the court has expended time considering, pleadings that go *not* to a question that will advance the merits of this case but instead to a collateral determination whether the court should consider a particular pleading. In isolation, such expenditures may appear inconsequential. Considered in the proper context of numerous civil actions and frequent disputes, it is apparent that cooperation between opposing counsel is essential to the efficient operation of our justice system.

B.

Turning to the merits of the motion to strike, the court concludes that the reply brief should not be stricken and that plaintiff should not be permitted to file a further response. Although defendant did not immediately seek permission to file a reply, the court has yet to consider the underlying substantive motions; it thus will not interfere with the court's decisional process to consider the reply. The court declines to permit plaintiff to file a further response because the burden on the motions is upon the defendant, who should thus be given the opportunity to open and close the argument.

SO ORDERED.

APPENDIX

Excerpts from the **Dallas Bar Association Guidelines of Professional Courtesy**

PREAMBLE

A lawyer's primary duty is to the client. But in striving to fulfill that duty, a lawyer must be ever conscious of the broader duty to the judicial system that serves both attorney and client.

A lawyer owes, to the judiciary, candor, diligence and utmost respect.

A lawyer owes, to opposing counsel, a duty of courtesy and cooperation, the observance of which is necessary for the efficient administration of our system of justice and the respect of the public it serves.

A lawyer unquestionably owes, to the administration of justice, the fundamental duties of personal dignity and professional integrity.

In furtherance of these fundamental concepts, the following Guidelines of Professional Courtesy are hereby adopted.

COURTESY, CIVILITY AND PROFESSIONALISM

1. General Statement

(a) Lawyers should treat each other, the opposing party, the court and members of the court staff with courtesy and civility and conduct themselves in a professional manner at all times.

(b) The client has no right to demand that counsel abuse the opposite party or indulge in offensive conduct. A lawyer shall always treat adverse witnesses and suitors with fairness and due consideration.

(c) In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.

2. Discussion

(a) A lawyer should not engage in discourtesies or offensive conduct with opposing counsel, whether at hearings, depositions or at any other time when involved in the representation of clients. In all contacts with the court and court personnel, counsel should treat the court and its staff with courtesy and respect and without regard to whether counsel agrees or disagrees with rulings of the court in any specific case. Further, counsel should not denigrate the court or opposing counsel in private conversations with their own client. We should all remember that the disrespect we bring upon our fellow members of the Bar and the judiciary reflects ***293** on us and our profession as well.

(b) Lawyers should be punctual in fulfilling all professional commitments and in communicating with the court and fellow lawyers.

DEPOSITIONS, HEARINGS, AND DISCOVERY MATTERS

1. General Statement

(a) Lawyers should make reasonable efforts to conduct all discovery by agreement.

(b) A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of

harassing opposing counsel or his client.
(c) Requests for production should not be excessive or designed solely to place a burden on the opposing party, for such conduct in discovery only increases the cost, duration, and unpleasantness of any case.

2. Scheduling Lawyers should, when practical, consult with opposing counsel before scheduling hearings and depositions in a good faith attempt to avoid scheduling conflicts.

3. Discussion
(a) General Guidelines
(1) When scheduling hearings and depositions, lawyers should communicate with the opposing counsel in an attempt to schedule them at a mutually agreeable time. This practice will avoid unnecessary delays, expense to clients, and stress to lawyers and their secretaries in the management of the calendars and practice.
(2) If a request is made to clear time for a hearing or deposition, the lawyer to whom the request is made should confirm that the time is available or advise of a conflict within a reasonable time (preferably the same business day, but in any event before the end of the following business day).
(3) Conflicts should be indicated only when they actually exist and the requested time is not available. The courtesy requested by this guideline should not be used for the purpose of obtaining delay or any unfair advantage.
(b) Exceptions to General Guidelines
(1) A lawyer who has attempted to comply with this rule is justified in setting a hearing or deposition without agreement from opposing counsel if opposing counsel fails or refuses promptly to accept or reject a time offered for hearing or deposition.
(2) If opposing counsel raises an unreasonable number of calendar conflicts, a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.
(3) If opposing counsel has consistently failed to comply with this guideline, a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.
(4) When an action involves so many lawyers that compliance with this guideline appears to be impractical, a lawyer should still make a good faith attempt to comply with this guideline.
(5) In cases involving extraordinary remedies where time associated with scheduling agreements could cause damage or harm to a client's case, then a lawyer is justified in setting a hearing or deposition without agreement from opposing counsel.

***294** 4. Minimum Notice for Depositions and Hearings
(a) Depositions and hearings should not be set with less than one week notice except by agreement of counsel or when a genuine need or emergency exists.
(b) If opposing counsel makes a reasonable request which does not prejudice the rights of the client, compliance herewith is appropriate without motions, briefs, hearings, orders and other formalities and without attempting to exact unrelated or unreasonable consideration.

5. Cancelling Depositions, Hearings and Other Discovery Matters
(a) General Statement Notice of cancellation of depositions and hearings should be given to thecourt and opposing counsel at the earliest possible time.
(b) Discussion
(1) Calling at or just prior to the time of a scheduled hearing or deposition to advise the court or opposing counsel of the cancellation lacks courtesy and consideration.
(2) Early notice of cancellation of a deposition or a hearing avoids unnecessary travel and expenditure of time by opposing counsel, witnesses, and parties. Also, early notice of cancellation of hearings to the Court allows the time previously reserved to be used for other matters.

* * *

TIME DEADLINES AND EXTENSIONS

1. General Statement Reasonable extensions of time should be granted to opposing counsel where such extension will not have a material, adverse effect on the rights of the client.

2. Discussion
(a) Because we all live in a world of deadlines, additional time is often required to complete a given task.
(b) Traditionally, members of this bar association have readily granted any reasonable request for an extension of time as an accommodation to opposing counsel who, because of a busy trial schedule, personal emergency or heavy work load, needs additional time to prepare a response or comply with a legal requirement.
(c) This tradition should continue; provided, however, that no lawyer should request an extension of time solely for the purpose of delay or to obtain any unfair advantage.

(d) Counsel should make every effort to honor previously scheduled vacations of opposing counsel which dates have been established in good faith.

* * *

Dallas Bar Association Lawyer's Creed:

1. I revere the Law, the System, and the Profession, and I pledge that in my private and professional life, and in my dealings with fellow members of the Bar, I will uphold the dignity and respect of each in my behavior toward others.

2. In all dealings with fellow members of the Bar, I will be guided by a fundamental sense of integrity and fair play; I know that effective advocacy does not mean hitting below the belt.

3. I will not abuse the System or the Profession by pursuing or opposing discovery through arbitrariness or for the purpose of harassment or undue delay.

4. I will not seek accommodation from a fellow member of the Bar for the rescheduling of any Court setting or discovery ***295** unless a legitimate need exists. I will not misrepresent conflicts, nor will I ask for accommodation for the purpose of tactical advantage or undue delay.

5. In my dealings with the Court and with fellow counsel, as well as others, my word is my bond.

6. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

7. I recognize that my conduct is not governed solely by the Code of Professional Responsibility, but also by standards of fundamental decency and courtesy.

8. I will strive to be punctual in communications with others and in honoring scheduled appearances, and I recognize that neglect and tardiness are demeaning to me and to the Profession.

9. If a fellow member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, I will not arbitrarily or unreasonably withhold consent.

10. I recognize that effective advocacy does not require antagonistic or obnoxious behavior, and as a member of the Bar, I pledge to adhere to the higher standard of conduct which we, our clients, and the public may rightfully expect.

The **American College of Trial Lawyers' Code of Trial Conduct** (rev. 1987) provides, in pertinent part:

PREAMBLE

Lawyers who engage in trial work have a specific responsibility to strive for prompt, efficient, ethical, fair and just disposition of litigation....

* * *

To his client, a lawyer owes undivided allegiance, the utmost application of his learning, skill and industry, and the employment of all appropriate legal means within the law to protect and enforce legitimate interests. In the discharge of this duty, a lawyer should not be deterred by any real or fancied fear of judicial disfavor, or public unpopularity, nor should he be influenced directly or indirectly by any considerations of self-interest.

To opposing counsel, a lawyer owes the duty of courtesy, candor in the pursuit of the truth, cooperation in all respects not inconsistent with his client's interests and scrupulous observance of all mutual understandings.

To the office of judge, a lawyer owes respect, diligence, candor and punctuality, the maintenance of the dignity and independence of the judiciary, and protection against unjust and improper criticism and attack, and the judge, to render effective such conduct, has reciprocal responsibilities to uphold and protect the dignity and independence of the lawyer who is also an officer of the court.

To the administration of justice, a lawyer owes the maintenance of professional dignity and independence. He should abide by these tenets and conform to the highest principles of professional rectitude irrespective of the desires of his client or others.

This Code expresses only minimum standards and should be construed liberally in favor of its fundamental purpose, consonant with the fiduciary status ***296** of the trial lawyer, and so that it shall govern all situations whether or not specifically mentioned herein.

* * *

12. DISCRETION IN COOPERATING WITH OPPOSING COUNSEL

The lawyer, and not the client, has the sole discretion to determine the accommodations to be granted opposing counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights, such as extensions of time, continuances, adjournments and admission of facts. In such matters no client has a right to demand that his counsel shall be illiberal or that he do anything

therein repugnant to his own sense of honor and propriety.

13. RELATIONS WITH OPPOSING COUNSEL

(a) A lawyer should adhere strictly to all express promises to and agreements with opposing counsel, whether oral or in writing, and should adhere in good faith to all agreements implied by the circumstances or by local custom. When he knows the identity of a lawyer representing an opposing party, he should not take advantage of the lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer's intention to proceed.

(b) A lawyer should avoid disparaging personal remarks or acrimony toward opposing counsel, and should remain wholly uninfluenced by any ill feeling between the respective clients. He should abstain from any allusion to personal peculiarities and idiosyncracies of opposing counsel.

* * *

American Bar Association and **State Bar of Texas Codes of Professional Responsibility** ethical considerations:

EC 7-10. The duty of a lawyer to represent his client with zeal does not militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm.

EC 7-36. Judicial hearings ought to be conducted through dignified and orderly procedures designed to protect the rights of all parties. Although a lawyer has the duty to represent his client zealously, he should not engage in any conduct that offends the dignity and decorum of proceedings. While maintaining his independence, a lawyer should be respectful, courteous, and above-board in his relations with a judge or hearing officer before whom he appears. He should avoid undue solicitude for the comfort or convenience of judge or jury and should avoid any other conduct calculated to gain special consideration.

EC 7-37. In adversary proceedings, clients are litigants and though ill feeling may exist between clients, such ill feeling should not influence a lawyer in his conduct, attitude, and demeanor towards opposing lawyers. A lawyer should not make unfair or derogatory personal reference to opposing counsel. Haranguing and offensive tactics by lawyers interfere with the orderly administration of justice and have no proper place in our legal system.

EC 7-38. A lawyer should be courteous to opposing counsel and should accede to reasonable requests regarding court proceedings, settings, continuances, waiver of procedural formalities, and similar matters which do not prejudice the rights of his client. He should follow local customs of courtesy or practice, unless he gives timely notice to opposing counsel of his intention not to do so. A lawyer should be punctual in fulfilling all professional commitments.

EC 7-39. In the final analysis, proper functioning of the adversary system depends upon cooperation between lawyers and tribunals in utilizing procedures which will preserve the impartiality of the tribunal and make their decisional processes prompt and just, without impinging upon the obligation of the lawyer to represent his client zealously within the framework of the law.

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